S. HRG. 101-797

NOMINATION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

MICHAEL L. WILLIAMS, OF TEXAS, TO BE ASSISTANT SECRETARY FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

MAY 23, 1990

Printed for the use of the Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE

32-971 ⇆ WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S541-37

COMMITTEE ON LABOR AND HUMAN RESOURCES

EDWARD M. KENNEDY, Massachusetts, *Chairman*

CLAIBORNE PELL, Rhode Island
HOWARD M. METZENBAUM, Ohio
CHRISTOPHER J. DODD, Connecticut
PAUL SIMON, Illinois
TOM HARKIN, Iowa
BROCK ADAMS, Washington
BARBARA A. MIKULSKI, Maryland
JEFF BINGAMAN, New Mexico

ORRIN G. HATCH, Utah
NANCY LANDON KASSEBAUM, Kansas
JIM JEFFORDS, Vermont
DAN COATS, Indiana
STROM THURMOND, South Carolina
DAVE DURENBERGER, Minnesota
THAD COCHRAN, Mississippi

NICK LITTLEFIELD, *Staff Director and Chief Counsel*
KRISTINE A. IVERSON, *Minority Staff Director*

NOMINATION

WEDNESDAY, MAY 23, 1990

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC

The committee met, pursuant to notice, at 2:04 p.m., in room SD-430, Dirksen Senate Office Building, Senator Paul Simon, presiding.

Present: Senator Simon.

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. The hearing will come to order.

We are here on the nomination of Michael Williams to be the Assistant Secretary for Civil Rights in the Department of Education.

[The prepared statement of Senator Simon follows:]

PREPARED STATEMENT OF SENATOR SIMON

Today, the committee will consider the nomination of Mr. Michael Williams for the position of Assistant Secretary for Civil Rights in the U.S. Department of Education. We will hear testimony from the nominee, Mr. Williams, and a panel of witnesses.

The nomination that we consider today is an especially important one. The Assistant Secretary for Civil Rights within the Department of Education is entrusted with the responsibility of ensuring equal educational opportunity for millions of children through the vigorous enforcement of civil rights laws. The Office of Civil Rights enforces four Federal statutes that prohibit discrimination on the basis of race, color, national origin, gender and disability in programs and activities receiving Federal financial assistance from the Department of Education.

Strong leadership and a commitment to substantive civil rights goals and enforcement must be a critical priority for this office if we are to make progress in achieving national education goals. Inequality and inadequacy of educational opportunity remain devastating problems for minority students. Quality education is still not available to most minority children. Thirty-six (36) years after Brown *v.* Board of Education, too many black, Hispanic and immigrant children are in schools characterized by high drop-out rates and low achievement.

The enforcement activity of the Office for Civil Rights is a critical component of the Federal effort to raise the level of educational achievement of all the Nation's students. The civil rights laws enforced by this office extend to 50 State education agencies, 16,000

school districts, 3,600 postsecondary institutions, and nearly 7,000 proprietary schools.

Yet, numerous report and oversight hearings held in 1985, 1987, and 1989 by the House of Representatives have documented a pattern of neglect and nonenforcement during the 1980's by the Office for Civil Rights.

Our Nation cannot afford a continuation of that neglect in the 1990's. As we move toward the 21st Century, our population is becoming less white and more minority. It is clear that the talent pool upon which our Nation must rely for its next generation of workers increasingly will be comprised of racial minorities, those with limited English speaking ability, and women.

In the past, strong civil rights enforcement has been a key element in securing enhanced educational opportunity for the most disadvantaged groups in our society. Last week, in a ceremony honoring the U.S. Commission on Civil Rights, President Bush stated:

And we must make sure that we as a nation continue to lead by example. We must see that true affirmative action is not reduced to some empty slogan, and that this principle of striking down all barriers to advancement has real, living meaning to all Americans. We will leave nothing to chance and no stone unturned as we work to advance America's civil rights agenda.

As President Bush's chief enforcement officer for civil rights in education, we will expect Mr. Wiliams, if confirmed, to indeed "Leave no stone unturned". Competent and committed leadership is needed for the Office for Civil Rights—an office that has been without a permanent assistant secretary for over a year. We now have an opportunity to reinvigorate the Federal civil rights effort in elementary, secondary and higher education. I look forward to learning what plans Mr. Williams has for this office and his views on contemporary education concerns.

We are particularly pleased to have Congressman Lamar Smith from Texas here to introduce the nominee.

Congressman.

STATEMENT OF HON. LAMAR SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. SMITH. Thank you, Senator.

Mr. Chairman, it is a distinct pleasure to be here today to introduce one of the 21st Congressional District's most outstanding citizens—Michael Williams.

Mr. Williams was one of the first individuals I met on the congressional campaign trail back in 1986. Since then, I have had the great pleasure of working with him on a number of projects. Now, I am confident he will do an excellent job as Assistant Secretary of Education for the Office of Civil Rights.

He is a native of Midland who always has valued education. His parents, John and Margaret Williams, who have dedicated a total of 77 years to teaching students in Midland, probably had a lot to do with that.

Mr. Williams attended St. Ann's Elementary and Junior High Schools, and later graduated from Robert E. Lee High School in Midland. He then left for the West Coast to earn three degrees

from the University of Southern California—a bachelor of arts, a master's of public administration, and a law degree.

After college, Mr. Williams returned to Midland where he was a Big Brother with Big Brothers/Big Sisters of Midland, and served on the boards of directors of United Way of Midland and the Midland Chamber of Commerce. He was also president of the Midland Community Day Nursery.

In 1985, he ran for county attorney, the first black to run in a Republican primary in Midland. The fact that he did not win opened the door for an opportunity outside of Texas. Mr. Williams left Midland to work in Washington as a senior trial attorney for the Criminal Section of the Civil Rights Division of the U.S. Department of Justice.

Mr. Williams has a long history of successful prosecutions in the area of civil rights. He prosecuted white supremacists in Idaho and Kentucky and an Arizona deputy sheriff for beating a Native American juvenile who was in custody. Mr. Williams also was awarded the Attorney General's Special Achievement Award in 1988 for his prosecution of North Carolina Klansmen who conspired to obtain stolen military weapons.

Mr. Williams currently serves as a Deputy Assistant Secretary of law enforcement with the Department of the Treasury. As part of his job, he played a major role in Project Outreach, which involved Treasury agents who helped reduce drug demand in their local communities. Before joining the Treasury Department in February 1989, Mr. Williams served as special assistant to Attorney General Dick Thornburgh.

Mr. Chairman, let me say to you it is a real pleasure to be with Michael Williams today and to have the opportunity to testify on his behalf and introduce him to you. And I must say that we are expecting a vote on the House floor momentarily, so I am going to leave Michael in your capable hands and excuse myself.

Senator SIMON. OK. Vote right. Whichever way that is, whatever the issue is. [Laughter.]

Senator SIMON. We thank you very, very much for being here.

Mr. SMITH. Thank you.

Senator SIMON. Mr. Williams, you have an opening statement, I believe.

STATEMENT OF MICHAEL L. WILLIAMS, TO BE ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION

Mr. WILLIAMS. Yes. Mr. Chairman, I am honored to appear at this hearing on my nomination to be Assistant Secretary for Civil Rights at the Department of Education. I express my sincere appreciation to both President Bush and Secretary Cavazos for their confidence in my ability to serve in this most important post. At this time, I would also like to thank Congressman Lamar Smith for having introduced me. In addition, I thank the countless administrators and educators that influenced my own education.

When Congress created the Department of Education a little over 10 years ago, it established an Office of Civil Rights with specific responsibility for enforcing the civil rights laws and directed that that office report semiannually to Congress on its activities

and its plans for the future. I will comply with that law as well as appear before any duly constituted body of this Congress.

As you know, the Office for Civil Rights is charged with the enforcement of four basic civil rights laws which prohibit discrimination on the basis of race, color, national origin, sex, handicap and age. I firmly believe that OCR is first and foremost a law enforcement agency. My background in law enforcement, as a manager and as a civil rights prosecutor, should, if I am confirmed, serve me well to ensure that OCR vigorously enforces the laws under its jurisdiction and operates in a fiscally sound manner.

As you are aware, President Bush and Secretary Cavazos have identified six national goals for education. Many of those goals are the specific responsibility of other offices within the Department of Education. However, OCR in my opinion will play a significant role in the accomplishment of some of them.

First, OCR can support the goal of increasing the high school graduation rate by ensuring that such generally acceptable educational strategies as strong discipline and ability grouping are not applied in a discriminatory fashion, and that students with limited language proficiency are provided appropriate assistance.

Second, if we are to property prepare our students for the high technology challenges of the future, minorities and women cannot be unlawfully under-represented in our math and science programs.

Oliver Wendell Holmes once said, "The greatest civil right is the right to be left alone." Along that line of thought, Secretary Cavazos recently challenged university administrators to end racial and sexual harassment on their campuses and directed the Assistant Secretaries for Postsecondary Education and Civil Rights to chair a task force on campus violence. My experience in the Criminal Section, Civil Rights Division, of the U.S. Department of Justice, provides a unique insight into what has become a major concern for college students and their parents.

I believe that OCR should pursue an aggressive, balanced, and forward-looking civil rights enforcement program. OCR must ensure that current and emerging initiatives such as choice and magnet schools do not work to resegregate our Nation's schools, and that higher educational systems function in a manner that ensures equal educational opportunity. Consistent with available resources, I anticipate initiating compliance reviews affecting issues not generally covered by the regular complaint mix and building upon initiatives already in place to improve OCR's staff training and delivery of technical assistance.

I have been advised that OCR has not enjoyed universal praise for its relationship with interested advocacy groups and the job it has done to date. If confirmed, I am committed to maintaining an open-door policy and seeking the advice and counsel of those groups on the operations and policies of OCR.

In closing, let me again thank you for the opportunity to appear here today. I stand ready to respond to any questions that you might have.

Senator SIMON. First, do you have any members of your family or friends you would like to introduce here?

Mr. WILLIAMS. Yes, Senator. I have my wife with me.

Senator SIMON. Very happy to have you with us here. We will get your counsel and advice before we determine whether to approve or disapprove the nominee here. [Laughter.]

I have just a few opening remarks. My full statement will be included in the record. The reality is that quality education is not provided today in this country for a majority of minority children. To a great extent, this is going to be the job of all of us, including Members of the Senate. But you are going to have to lead in this area.

What has been happening in the office that you have been nominated to head is not too encouraging. I will give you a quote or two in just a moment.

Last week, President Bush in a ceremony honoring the new members of the U.S. Commission on Civil Rights said, "We must make sure that we as a Nation continue to lead by example. We must see that true affirmative action is not reduced to some empty slogan, and that this principle of striking down all barriers to advancement has real, living meaning to all Americans. We will leave nothing to chance and no stone unturned as we work to advance America's civil rights agenda."

I applaud those words of the President. I want to make sure that we follow through on those words. The Office for Civil Rights has been without a leader for 15 months, and there is great criticism of that office. It is not of you personally, obviously. Let me, for example, quote from a letter, and I will enter the entire letter in the record. Congressman Ted Weiss has written to the chairman of the committee, Senator Kennedy, to advise us about the reports prepared by the House on the work of the Office for Civil Rights. It says, "The reports detail a disgraceful performance by the Department's Office for Civil Rights. Investigations of civil rights complaints were routinely closed improperly, even when violations of Federal anti-discrimination laws were found. Policies were enacted in contravention of Federal laws. Court orders were ignored or circumvented. In States that had adopted court-ordered desegregation plans, and desegregation had not been accomplished, often due to failure to conform to the plans, the Department allowed the plans to lapse."

[The letter of Mr. Weiss follows:]

TED WEISS, NEW YORK, CHAIRMAN
HENRY A. WAXMAN, CALIFORNIA
ROBERT PRLOSI, CALIFORNIA
DONALD M. PAYNE, NEW JERSEY
CARDISS COLLINS, ILLINOIS

GEORGE W. GEKAS, PENNSYLVANIA
PETER SMITH, VERMONT
ILEANA ROS-LEHTINEN, FLORIDA

ONE HUNDRED FIRST CONGRESS

Congress of the United States

House of Representatives

HUMAN RESOURCES AND
INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-372
WASHINGTON, DC 20515
(202) 225-3741
FAX NO. 225-3382

May 15, 1990

Honorable Edward M. Kennedy
Chairman
Committee on Labor and Human Resources
Room 428, Senate Dirksen Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Committee on Labor and Human Resources is considering the nomination of Michael Williams to be the Assistant Secretary for Civil Rights at the U.S. Department of Education. I believe it is vital that his awareness of the Department's recent record in civil rights enforcement be elicited, as well as his opinion of the Department's policies and performance during the past ten years.

The House Subcommittee on Human Resources and Intergovernmental Relations, which I have the privilege to chair, has oversight responsibility for the Department of Education, and we have paid particular attention to the Office for Civil Rights. The subcommittee has conducted several hearings and issued two reports on civil rights enforcement in education. Copies of the reports are enclosed.

The reports detail a disgraceful performance by the Department's Office for Civil Rights. Investigations of civil rights complaints were routinely closed improperly, even when violations of federal anti-discrimination laws were found. Policies were enacted in contravention of federal laws. Court orders were ignored or circumvented. In States that had adopted court-ordered desegregation plans, and desegregation had not been accomplished, often due to failure to conform to the plans, the Department allowed the plans to lapse.

I ask that the subcommittee's reports be entered into the record of the upcoming confirmation hearings, and that Mr. Williams' position on the issues addressed by the reports be clearly defined. The two previous Assistant Secretaries for Civil

Rights consistently allowed the Administration's policies to supersede civil rights law.

Mr. Williams has spent his career in law enforcement. I think it is important to establish now, before he is confirmed, if he intends to continue his role as an enforcer of laws, or if he, like his predecessors, will bend the law in the name of policy.

I greatly appreciate your attention to this matter. If there are any questions, you may contact me directly or Marc Smolonsky of the subcommittee staff.

Sincerely,

Ted Weiss

TED WEISS
Chairman

TW:ms

Union Calendar No. 207

100th Congress, 1st Session - - - - - - - - - - House Report 100-334

FAILURE AND FRAUD IN CIVIL RIGHTS ENFORCEMENT BY THE DEPARTMENT OF EDUCATION

TWENTY-SECOND REPORT

BY THE

COMMITTEE ON GOVERNMENT OPERATIONS

together with

SEPARATE AND ADDITIONAL VIEWS

OCTOBER 2, 1987.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

77-503 WASHINGTON : 1987

COMMITTEE ON GOVERNMENT OPERATIONS

JACK BROOKS, Texas, *Chairman*

JOHN CONYERS, Jr., Michigan
CARDISS COLLINS, Illinois
GLENN ENGLISH, Oklahoma
HENRY A. WAXMAN, California
TED WEISS, New York
MIKE SYNAR, Oklahoma
STEPHEN L. NEAL, North Carolina
DOUG BARNARD, Jr., Georgia
BARNEY FRANK, Massachusetts
TOM LANTOS, California
ROBERT E. WISE, Jr., West Virginia
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
JOHN M. SPRATT, Jr., South Carolina
JOE KOLTER, Pennsylvania
BEN ERDREICH, Alabama
GERALD D. KLECZKA, Wisconsin
ALBERT G. BUSTAMANTE, Texas
MATTHEW G. MARTINEZ, California
THOMAS C. SAWYER, Ohio
LOUISE M. SLAUGHTER, New York
BILL GRANT, Florida
NANCY PELOSI, California

FRANK HORTON, New York
ROBERT S. WALKER, Pennsylvania
WILLIAM F. CLINGER, Jr., Pennsylvania
AL McCANDLESS, California
LARRY E. CRAIG, Idaho
HOWARD C. NIELSON, Utah
JOSEPH J. DioGUARDI, New York
JIM LIGHTFOOT, Iowa
BEAU BOULTER, Texas
DONALD E. "BUZ" LUKENS, Ohio
AMORY HOUGHTON, Jr., New York
J. DENNIS HASTERT, Illinois
JON L. KYL, Arizona
ERNEST L. KONNYU, California
JAMES M. INHOFE, Oklahoma

WILLIAM M. JONES, *General Counsel*

HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE

TED WEISS, New York, *Chairman*

THOMAS C. SAWYER, Ohio
JOHN CONYERS, Jr., Michigan
HENRY A. WAXMAN, California
BARNEY FRANK, Massachusetts

JIM LIGHTFOOT, Iowa
ERNEST L. KONNYU, California
JAMES M. INHOFE, Oklahoma

EX OFFICIO

JACK BROOKS, Texas

FRANK HORTON, New York

JAMES R. GOTTLIEB, *Staff Director*
MARC SMOLONSKY, *Professional Staff Member*
PAMELA H. WELCH, *Clerk*
MARY KAZMERZAK, *Minority Professional Staff*

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, October 2, 1987.

Hon. JIM WRIGHT,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's twenty-second report to the 100th Congress. The committee's report is based on a study made by its Human Resources and Intergovernmental Relations Subcommittee.

JACK BROOKS, *Chairman.*

CONTENTS

	Page
I. Introduction	1
II. Background	3
A. The *Adams* order and the timeframes	3
B. The expired desegregation plans	6
III. Findings	8
A. The 10 States whose desegregation plans expired have not eliminated the vestiges of illegal segregation, yet DOEd has taken no remedial action to enforce the law	8
1. The States' record of higher education desegregation	10
a. Arkansas	10
b. Delaware	11
c. Florida	11
d. Georgia	14
e. Missouri	16
f. North Carolina (Community Colleges)	18
g. Oklahoma	20
h. South Carolina	22
i. Virginia	24
j. West Virginia	26
2. OCR task force evaluations	28
3. The factual summaries	30
B. DOEd has not adequately investigated a nationwide scheme to backdate civil rights documents, improperly close discrimination investigations, and provide false information to a Federal court	37
IV. Recommendations	42
A. OCR should issue findings on title VI compliance in the higher education systems of the 10 States whose desegregation plans have expired	42
B. OCR should conduct a comprehensive investigation of all improper activities in connection with attempts to falsify documents and mislead the *Adams* court	43

VIEWS

Separate views of Hon. Jim Lightfoot, Hon. Frank Horton, Hon. Robert S. Walker, Hon. William F. Clinger, Jr., Hon. Al McCandless, Hon. Larry E. Craig, Hon. Howard C. Nielson, Hon. Joseph J. DioGuardi, Hon. Beau Boulter, Hon. Donald E. "Buz" Lukens, Hon. Amory Houghton, Jr., Hon. J. Dennis Hastert, Hon. Jon L. Kyl, Hon. Ernest L. Konnyu, and Hon. James M. Inhofe	44
Additional views of Hon. James M. Inhofe	47

Union Calendar No. 207

100TH CONGRESS *1st Session* | HOUSE OF REPRESENTATIVES | REPORT 100-334

FAILURE AND FRAUD IN CIVIL RIGHTS ENFORCEMENT BY THE DEPARTMENT OF EDUCATION

OCTOBER 2, 1987.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

Mr. BROOKS, from the Committee on Government Operations, submitted the following

TWENTY-SECOND REPORT

together with

SEPARATE AND ADDITIONAL VIEWS

BASED ON A STUDY BY THE HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE

On September 29, 1987, the Committee on Government Operations approved and adopted a report entitled "Failure and Fraud in Civil Rights Enforcement by the Department of Education." The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTION

Under the House of Representatives Rule X, 2(b)(2), the Committee on Government Operations is authorized to "review and study, on a continuing basis, the operation of Government activities at all levels with a view to determining their economy and efficiency." The committee has assigned this responsibility, as it pertains to the Department of Education (DOEd), to the Subcommittee on Human Resources and Intergovernmental Relations. Pursuant to its authority, the subcommittee began an oversight review of civil rights enforcement by the Department in June 1983.

The Department of Education's Office for Civil Rights (OCR) is responsible for enforcing Federal laws which prohibit discrimina-

tion based on race, national origin, sex, handicap, or age in all education programs and activities funded by the Federal Government. Specifically, this enforcement power is authorized by Title VI of the Civil Rights Act of 1964 (race, color, national origin); Title IX of the Education Amendments of 1972 (sex); Section 504 of the Rehabilitation Act of 1973 (handicap); and The Age Discrimination Act of 1975.

OCR is required to conduct investigations according to certain timeframes and procedures mandated under an order imposed by the U.S. District Court for the District of Columbia in *Adams* v. *Califano.* The original order was issued in 1977, and was modified twice in 1983 as a result of *Adams* v. *Bell,* a continuation of the case.

Under formal "delegation of authority" agreements with other Federal agencies, OCR is also empowered to enforce laws within its purview in matters involving non-educational Federal funds received by educational institutions. For example, OCR is responsible for enforcing Title VI in a school system whose only source of Federal funds may be a school lunch program funded by the Department of Agriculture.

The committee approved a report based on the subcommittee's initial investigation of OCR on September 30, 1985. The report found that OCR had not sought enforcement in cases where discrimination was found, and the committee recommended several measures to improve the enforcement process. The report also criticized OCR's 1985 decision to switch from a measure of actual success in evaluating higher education desegregation plans to a good faith standard whereby OCR would judge the plans based solely on the implementation of measures, regardless of their outcome. The change was extremely significant because, at the time of the committee's first report on DOEd's OCR, 10 State higher education desegregation plans, which were ordered as a result of the *Adams* case, were about to expire.

The 10 State plans expired at the end of 1985 and during the early months of 1986. On October 23, 1986, the subcommittee chairman asked OCR for numerous documents related to its review of the expired plans, including a status report on OCR's legally-required process for determining if the States in question had corrected the violations of law which had originally prompted the desegregation plans.

In the course of the investigation, subcommittee staff reviewed OCR regional office summaries of desegregation plan results for each State, OCR site-visit reports of all State-supported institutions of higher education covered by the 10 plans, the original goals and commitments of each plan, and the history of the 10 plans.

At the time of the subcommittee's review of OCR's handling of the expired desegregation plans, the subcommittee also received allegations that OCR staff had backdated investigative documents to make them appear in accord with timeframes mandated by the *Adams* order. Staff conducted a separate review of the backdating charges. During the inquiry, staff examined investigative reports about the backdating compiled by the Department of Education's Office of Inspector General and separate, internal reports prepared by OCR staff. Individual OCR officials were also interviewed as

part of the backdating investigation. The backdating affair involved investigations of discrimination complaints, and although the documents were covered by the *Adams* order, the cases did not involve higher education desegregation plans. Thus, the backdating investigation was not directly related to the desegregation review.

The concomitant investigations culminated in a hearing on April 23, 1987. Witnesses at the hearing included the Acting Assistant Secretary for Civil Rights at the Department of Education; counsels for the NAACP Legal Defense Fund, which represented the plaintiffs in the *Adams* case; representatives of minority students and teachers in Virginia and South Carolina, States with expired desegregation plans; and an OCR employee with direct knowledge of the backdating problem.

II. Background

A. The "Adams" order and the timeframes

As the primary Federal civil rights enforcement authority for recipients of Federal education funds, OCR is responsible for ensuring that recipients do not violate civil rights laws. The laws require OCR to investigate complaints of discrimination and conduct broad reviews in areas where discrimination may be a systemic problem. OCR uses two methods of investigating violations of civil rights laws. The primary method is the complaint investigation, which is conducted in response to allegations of discrimination from individuals and groups. In fiscal year 1986, OCR received 2,648 complaints.[1]

The second method of investigation is the compliance review. The reviews, which are initiated by OCR, examine discrimination issues related to the four laws for which OCR has enforcement responsibility. The subjects of the reviews are targeted by examining information gathered in surveys conducted by OCR. The surveys help OCR identify potential areas of systemic discrimination. OCR initiated 196 compliance reviews in fiscal year 1986.[2]

When violations of law are found, either by investigations or compliance reviews, and the violator is unwilling to voluntarily correct the problem, OCR has two enforcement methods at its disposal. The office can seek the termination of Federal funds to the violating district or institution by bringing the case before an administrative law judge. The process is called issuing a notice of opportunity for hearing. The second method available to OCR is referral of the case to the Department of Justice (DOJ), which can sue the violator to force compliance with the law.

The two methods of enforcement are rarely used by OCR. In its 1985 report, the committee found that, from 1981 to 1985, OCR found 2,000 violations of law, but issued only 27 notices of opportunity for hearing, and referred only 24 additional cases to the Justice Department. The committee noted that a large majority of violations are settled voluntarily at one of four stages of the investigative process. If the first stage, called early complaint resolution, fails, OCR enters into Pre-Letter of Finding (LOF) negotiations,

---

[1] Office for Civil Rights' Sixth Annual Report, fiscal year 1986, Department of Education, p. v.
[2] Ibid.

which allow the case to be settled voluntarily prior to the issuance of investigative findings. If Pre-LOF negotiations fail, a third stage allows for a voluntary settlement after the finding of discrimination is made. During administrative proceedings, the violator is given a final opportunity to correct the discrimination.

Because OCR has demonstrated a historic recalcitrance towards enforcing civil rights laws, the office is virtually controlled by the *Adams* decision, a U.S. Court order issued because OCR had refused to use its enforcement authority where illegal discrimination was found.

The *Adams* case began in 1969 when OCR sent letters to 10 southern and border States informing them that they had failed to eliminate the vestiges of racial segregation in higher education systems. Five States ignored OCR's letters, and the other five submitted inadequate desegregation plans.

OCR did not require the 10 States to submit adequate desegregation plans. On July 3, 1969, Department of Health, Education, and Welfare (HEW) Secretary Robert H. Finch and Attorney General John H. Mitchell jointly announced a new policy to minimize the number of cases where Federal funds are cut off from schools in violation of Title VI. The policy also revoked previous Title VI deadlines for complete desegregation by the 1969–1970 school year, at the latest. What had been apparent was now clear public policy: OCR would not take action against illegal segregation.

On October 19, 1970, the NAACP Legal Defense and Education Fund (LDF) filed suit, alleging six different causes of action against Elliot Richardson, the Secretary of HEW, and J. Stanley Pottinger, then the Director of the Office for Civil Rights at HEW, which was moved to the Department of Education upon its creation in 1980. The suit charged HEW with refusing to take action against school districts under court order requiring desegregation; refusing to enforce Title VI against higher education systems; refusing to initiate enforcement proceedings against school districts that had reneged on existing desegregation plans; refusing to terminate Federal funds to school districts that had been the subject of enforcement proceedings for more than two years; and refusing to abide by Supreme Court decisions in evaluating desegregation plans.

Paragraph ten of the complaint summarized the basis for the suit:

> Apart from their individual merits, the six causes of action are symptomatic of a general and calculated default by HEW in enforcement of Title VI since its passage in 1964. This failure to enforce Title VI and the Fifth Amendment's guarantee against Federal assistance to racial segregation and discrimination has been widespread, affecting thousands of public schools, colleges, and universities across the country.

On November 16, 1972, the court ruled in favor of the plaintiffs, and issued on February 16, 1973, a six-part order requiring OCR to begin enforcement against the 10 States found in violation of Title VI; to enforce Title VI against the school districts that had reneged on their desegregation plans; to take action against 85 school districts in violation of a previous Federal court decision; to imple-

ment a program to enforce Title VI in vocational and special education programs; to monitor school districts under Federal court order; and to report to the court on a regular basis all enforcement proceedings instituted by OCR.

The plaintiffs later discovered evidence in the depositions of Federal officials that HEW had not fully complied with the order, and filed another motion, seeking further relief. On March 14, 1975, the *Adams* court entered its First Supplemental Order, which required OCR to contact more than 100 school districts still in violation of a previous Federal court decision; begin enforcement proceedings against 6 school districts in violation of the Emergency School Aid Act; and, for the first time, the court imposed timeframes for the internal processing of Title VI violations. On July 17, 1975, the court eased the deadline requirements for cases that had been pending prior to the imposition of the March 14 order.

In 1976, new classes of plaintiffs were added as parties to the litigation. Four parents of Mexican-American students attending public schools in Region Six were granted the right to intervene, and the Women's Equity Action League, after an appeal, was also allowed to intervene, alleging that OCR was not enforcing Title IX. In 1977, the National Federation for the Blind was granted plaintiff's status. The new plaintiffs enabled the litigation to extend to matters involving Section 504 and Title IX, as well as Title VI.

On April 1, 1977, in response to a new plaintiff's motion, the court ordered HEW to notify six States that post-secondary education desegration plans it had earlier accepted were inadequate, and did not comply with HEW criteria regarding desegration plans.

On October 5, 1977, in response to a motion from the plaintiffs charging that OCR had not filled staff positions, the court found that HEW had "not taken every feasible step to obtain resources which would facilitate coming into compliance with the Court's order of June 14, 1976." The court ordered HEW to expand its resources. The court also asked the parties to negotiate a settlement on the use of resources and timeframes.

A settlement was negotiated which culminated in a Consent Order approved by the court on December 29, 1977. The previously ordered timeframes were adopted as part of the Consent Decree without major changes. OCR's reporting requirements were expanded, and the provisions for the elimination of backlogged complaints and the exemption of certain cases were retained in the Consent Decree. The decree also required procedural steps to be followed after the receipt of a complaint.

OCR's initial efforts to comply with the 1977 Consent Order were successful. The backlog of pre-order cases was nearly eliminated, but the success was short-lived. OCR began consistently missing the *Adams* deadlines in 1980, and by 1981, a backlog of 170 old complaints, some of which had been pending for as long as nine years, remained. The plaintiffs returned to court, seeking stronger relief, while at the same time, the Federal Government sought to vacate the 1977 order. The court rejected the Government's motion, and issued a new order on March 11, 1983, which had the effect of strengthening the 1977 order. The 1983 order also required OCR to initiate enforcement on numerous old cases where violations of law

had been found. OCR is currently attempting to have the *Adams* order rescinded.

Until the 1983 order, OCR did not seek enforcement in individual cases where violations of law were found. Julius Chambers, Director of the NAACP Legal Defense Fund, testified in 1985 about OCR's traditional reluctance to enforce civil rights laws:

> There has been bipartisan anathema to employing even the threat of fund termination by initiating the administrative enforcement process when voluntary negotiations fail. But it is only the willingness to use the stick of Title VI that makes the carrot—voluntary compliance—effective.
>
> In the early years (1964–1968) of Title VI, the real potential of losing federal money was enough to desegregate thousands of Southern schools. After the first *Adams* order in 1973, OCR began initiating administrative actions against Southern districts whose desegregation plans did not pass constitutional muster. After the 1983 *Adams* order set deadlines for securing compliance in pending cases, OCR took 23 cases to administrative law judges and referred 18 cases to the Department of Justice. That order generated more enforcement proceedings than had occurred in all of the previous decades.[3]

The committee's 1985 report, "Investigation of Civil Rights Enforcement by the Office for Civil Rights at the Department of Education," found that, after the 1983 order was issued, OCR used new and innovative methods to circumvent the order. One such ruse involved referring cases to DOJ, which was not covered by the *Adams* order. In 1985, 24 cases, nearly half the pending enforcement caseload at OCR, had been referred to DOJ. The committee found that 16 were idle, 5 were sent back to OCR, 1 was involved in a pending suit, and 2 were resolved by the entering of consent decrees. The cases were as old as six years, yet findings of illegal discrimination had not been addressed. The committee concluded that "the referral of cases to DOJ has proven to be an effective method of circumventing the *Adams* order and escaping the court's jurisdiction."[4]

B. THE EXPIRED DESEGREGATION PLANS

In 1969 and 1970, HEW conducted compliance reviews of State systems of higher education. Subsequently, the HEW OCR notified 10 States (Louisiana, Mississippi, Oklahoma, North Carolina, Florida, Arkansas, Pennsylvania, Georgia, Maryland, and Virginia) that the vestiges of their previously segregated, dual higher education systems remained, in violation of Title VI. The States were notified of their obligation to submit desegregation plans within 120 days.

---

[3] Hearings before a subcommittee of the Committee on Government Operations, House of Representatives, "Investigation of Civil Rights Enforcement by the Department of Education," July 18 and September 11, 1985, pp. 11–12.

[4] Investigation of Civil Rights Enforcement by the Office for Civil Rights at the Department of Education," House Report 99–458, Committee on Government Operations, U.S. House of Representatives, December 30, 1985, p. 11.

Five States (Louisiana, Mississippi, Oklahoma, North Carolina, and Florida) ignored HEW's request to submit plans. The remaining five States submitted plans which HEW found to be totally unacceptable. However, HEW took no further action against any of the 10 States.

The plaintiffs in the *Adams* case filed suit, and on February 16, 1973, the U.S. District Court in Washington, D.C., ordered HEW to commence enforcement action against the 10 States.

The Federal Government appealed the decision, but an appellate court ruled that HEW must negotiate acceptable desegregation plans with the States, and that the plans must be approved by June 21, 1974, or enforcement procedures must be instituted by that date.

Prior to the deadline, OCR transferred the Louisiana and Mississippi cases to DOJ. In June 1974, OCR accepted desegregation plans from the remaining eight States.

The *Adams* plaintiffs returned to court in 1975, charging that the desegregation plans were insufficient and were not achieving the desired results. The court agreed, ruling in April 1977 that the 1974 plans did not meet minimum requirements for desegregation. The court ordered OCR to publish criteria specifying the ingredients of an acceptable desegregation plan. On July 5, 1977, HEW published criteria, which were revised one month later after input from the States. The criteria were revised again and, on February 15, 1978, HEW issued the "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education."

The plans negotiated by OCR contained specific goals based on the court-ordered criteria agreed to by the States. A Blue Ribbon Panel of members from the higher education community, interested civil rights groups, and HEW officials was assembled by the Secretary of HEW to assist in the development of the criteria. The criteria established by the panel required numerical goals in the recruitment and enrollment of students, hiring of faculty, and appointments to school governing boards.

On February 15, 1978, OCR accepted revised desegregation plans, based on the new criteria, from six States (Arkansas, Florida, North Carolina Community College System, Oklahoma, Virginia, and Georgia).

In 1980, the *Adams* plaintiffs filed a new motion with the court, charging that OCR had not taken action against other States found to be in violation of Title VI (Alabama, Delaware, South Carolina, Missouri, Kentucky, and West Virginia). Alabama and Ohio were referred to DOJ, and OCR accepted desegregation plans from the remaining four States in 1981.

The plans for the State systems of higher education involved in the *Adams* litigation, excepting the cases referred to DOJ, expired during the 1985-86 school year. However, OCR is still responsible for enforcing Title VI in those States. If violations of the law are found, further enforcement action may be necessary.

III. Findings

A. The 10 States whose desegregation plans expired have not eliminated the vestiges of illegal segregation, yet DOED has taken no remedial action to enforce the law

The subcommittee reviewed the history of the expired desegregation plans—including the original findings of violation of Title VI—the OCR regional summaries of each expired plan, and the OCR staff site visits of every institution covered by the plans. Based on this review, the committee concludes that the original violations of law have not been corrected, and the factors that OCR found to constitute illegal vestiges of segregated systems of higher education remain.

This view was acknowledged by OCR staff as early as November 15, 1984. In a memorandum to the Assistant Secretary for Civil Rights, Frederick T. Cioffi, the Acting Director for Policy and Enforcement in OCR, wrote:

> In order for OCR to fulfill its law enforcement responsibilities with respect to a state in which OCR previously found a violation, OCR must either (1) find that there are appropriate commitments and plans—or, arguably, reasonable expectations—for continued progress, (2) find that the violation has been remedied, or (3) take formal enforcement action. In order to make the second ("final compliance") finding, OCR's position has been that it must find that the remedy has achieved "elimination of the vestiges of the dual system." OCR has said, for example, that, with respect to student enrollment, the goal is a situation in which "student choice is no longer determined by the effects of the dual system." *Because the state systems with which it has been dealing have not heretofore even approximated what might be considered the elimination of the vestiges of dual systems, OCR has never defined how it would decide when that complete elimination of vestiges has been achieved in a state system.* In short, OCR has not defined the minimum requirements for a finding that the violations found in 1967-70 have been remedied.[5] [Emphasis added.]

The desegregation plans were designed to correct inequities resulting from the previous dual systems of higher education in the 10 States. The inequities included disparities between white and black students in terms of enrollment, between white and black faculty in terms of faculty employment, and between white and black administrators in terms of service on school governing boards. These problems were outlined by the subcommittee chairman in an exchange with the OCR Acting Assistant Secretary for Civil Rights.

---

[5] "Fall 1985 Expiration of Current Plans of First Tier States," Memorandum from Frederick T. Cioffi, Acting Director for Policy and Enforcement Service, to Harry M. Singleton, Assistant Secretary for Civil Rights, Office for Civil Rights, U.S. Department of Education, November 15, 1984.

Mr. WEISS. Now the status reports show that the States still have the problems OCR found to be illegal in 1969 and 1970. The reports find a disparity between blacks and whites in student college enrollment rates. There is a disparity between black and white student retention rates. There is a drastic shortage of black faculty. Entrance rates to graduate and professional schools for blacks are still too low. Traditionally black institutions still lack resources of traditionally white institutions. There are differences in degree. In some cases, there has been some improvement since 1969, and in some cases, the situation is worse, but these are clearly the findings of the regional status reports.

Do you have any reason to dispute the facts compiled by the OCR regional offices?

Ms. CORO. No, Mr. Chairman, and those facts are in the State reports. We have not changed those facts. That information that you cited still appears in the State factual reports.[6]

The civil rights problems inherent in the higher education systems of the 10 States led to a situation which has come full cycle since 1969, when the first findings of illegalities were made by the Federal Government. Forced by progressive civil rights laws enacted by Congress, HEW found conclusive evidence that the illegal vestiges of the segregated systems of the past still existed, and were denying minority students their legal right to higher education. The Executive Branch was unwilling to enforce the laws, so the findings went unaddressed until the *Adams* suit was filed to require HEW to take corrective measures; in the case of the 10 States, desegregation plans. Now those plans have expired, and the Federal Government once again appears reluctant to enforce Title VI compliance in the 10 States. The players in the *Adams* drama are again poised on the brink of renewing their legal contest.

In reviewing the plans, the committee believes it is important to remember that each plan was designed to eliminate the vestiges of *de jure* (illegal), segregated systems of higher education. Each plan had goals, agreed to by the States themselves, whereby the elimination of the vestiges would be achieved.

The goals in each plan were based on criteria, whose development was ordered by the *Adams* court. The criteria contain numerical goals, which include the following:

The proportion of black high school graduates throughout each state shall be equal to the proportion of white high school graduates entering two-year and four-year undergraduate institutions of higher education.

There shall be an annual increase in the proportion of black students in traditionally white four-year institutions of higher education.

Disparity between the proportion of black high school graduates and white high school graduates entering traditionally

---

[6] Hearing before a subcommittee of the Committee on Government Operations, House of Representatives, "Civil Rights Enforcement by the Department of Education," April 23, 1987, hereinafter referred to as "Hearing," p. 300.

white institutions of higher education will be reduced by at least 50 percent by academic year 1982–83.

The proportion of black state residents who graduate from undergraduate schools and enter graduate schools shall be equal to the proportion of white state residents who enter such schools.

Increase the total proportion of white students attending traditionally black institutions.

Expand mobility between two-year and four-year institutions as a method of meeting the goals.

There are similar goals for reducing racial disparities in the hiring of faculty and appointments to school governing boards.

According to OCR, the States did not meet the desegregation goals they established for themselves. For example, Arkansas, Delaware, Georgia, Oklahoma, South Carolina, and Virginia set the goal of having the proportion of black high school graduates equal the proportion of white high school graduates entering two- and four-year colleges. None of these States met the goal, and only two, Delaware and South Carolina, showed any progress toward meeting the goal.[7]

Ten States set goals for hiring black faculty at the doctoral level. None met the goals. The State also established goals for hiring black faculty at the nondoctoral level. Two States, Georgia and Oklahoma, met one numerical goal in that category, but missed all others.[8]

Nine States set goals for hiring black administrators at the doctoral levels. Delaware, Florida, Virginia, and West Virginia met their goals. Also, the nine States set goals for hiring black administrators at the nondoctoral level. Six States met only one goal in that category.[9]

1. The States' Record Of Higher Education Desegregation

a. Arkansas

The disparity between black and white student entrance rates at Arkansas higher education institutions increased from 10.1 percent in 1978–79 to 13.1 percent in 1985–86.[10]

The percentage disparity between blacks and whites in graduate and professional programs also increased in every major field of study from 1978 to 1985.[11]

Hiring of black faculty increased between 1978 and 1985, but fell short of projected goals. Traditionally white institutions (TWI's) needed 38 additional black nondoctoral faculty to reach the desegregation plan's employment projections. Also, 12 more black faculty members were needed to reach employment projections for positions requiring a doctorate.[12]

---

[7] Hearing, p. 333.
[8] Ibid.
[9] Ibid.
[10] "Comprehensive Report for Arkansas," Taylor D. August, Director, OCR, Region VI, May 14, 1986, p. 18.
[11] Ibid., p. 54.
[12] Ibid., p. 68.

The percentage of blacks in nonacademic jobs at higher education facilities marginally increased from 20.9 percent in 1978 to 21 percent in 1986.[13]

Black representation on the State Board of Education increased from 13.3 percent in 1978 to 20 percent in 1986, but black membership on the boards of four-year institutions remained the same during this period. Four of six two-year institutions have no black representation on governing boards.[14]

b. Delaware

The attrition rates (the rates at which students leave school without obtaining a degree) for blacks is greater than for whites at State schools, and the disparity has increased from 1981 to 1985. "This development warrants some action to determine the reasons for these changes and to develop remedies for reducing black student attrition and the disparity in the black and white rates." [15]

In 1985, 1,370 blacks and 5,921 whites graduated from high school. The entry rate was 35.5 percent for black and 49.1 percent for whites. The entrance disparity was 13.6 percent. In 1981, the entrance rate disparity was 14.3 percent. Although there was marginal improvement, the goal of the State desgregation plan, committed to the objective of having no disparity, was not met.[16]

The State eliminated the disparity between white and black graduates of four-year institutions entering graduate schools.[17]

The State has met its faculty hiring goals, but has not met its goals for appointing blacks to school governing boards.[18]

c. Florida

Florida committed to enroll, as first-time-in-college (FTIC) students in the public community colleges and universities black and white student proportions equal to the high school student graduate population. The State failed. Between 1982 and 1986, the disparity rate between black public high school graduates and black FTIC students increased from 8.73 percent to 8.87 percent. Between 1982 and 1985, the State University System disparity rate improved from 6.08 percent to 5.18 percent. However, in 1985 the State System disparity rate grew to 6.75 percent. From 1982 to 1985, the number of black FTIC freshman increased from 1,323 to 1,715, but the 1986 number decreased by 5.5 percent to 1,620. Between 1982 and 1986, the Community College System disparity rate worsened, increasing from 9.26 percent to 9.45 percent.[19]

The State plan commits the eight predominantly white universities in Florida to removing 50 percent of the disparity between the aggregate pool of black high school graduates and community col-

---

[13] Ibid., p. 81.
[14] Ibid., p. 85.
[15] "Final Status Report on the State of Delaware's Title VI Compliance Plan for Equal Opportunity in State-Supported Institutions of Higher Education," Jeanette J. Lim, Acting Director, Office for Civil Rights, Region III, U.S. Department of Education, May 30, 1986, p. 30.
[16] Ibid., pp. 39–41.
[17] Ibid., p. 93.
[18] Ibid., pp., 101 and 109.
[19] "Florida *Adams* Status Report for the 1984–85 Academic Year and Fall 1985," Jesse L. High, Acting Regional Director, Office for Civil Rights, Region IV, U.S. Department of Education, pp. 18–19.

lege graduates and the proportions of black students entering the predominantly white schools. In 1985, no university in the State met its goal for enrolling black FTIC and transfer students. In 1984, six universities exceeded their goal, an accomplishment attributed to a significant decrease in the number of white FTIC students from 21,733 in the fall of 1983 to 12,031 in the fall of 1984 rather than an overall increase in black enrollment. The enrollment of black students in the community colleges decreased from 19,432 in the fall of 1982 to 19,018 in the fall of 1985, while white enrollment decreased from 168,447 in the fall of 1982 to 163,742 in the fall of 1985. In 1985–86, the community college system enrolled 24.09 percent of the white high school graduates and 15.94 percent of the black high school graduates. The disparity rate shows that from 1982 to 1985 the system did not achieve the objective to enroll black high school graduates at the same rate as white high school graduates.[20]

The Florida plan states: "Each institution will assess its admission policies in order to identify any barriers which could hinder the institution in accomplishing its contribution to the System goals for equalizing educational opportunity."[21] The plan has also failed in this regard. The percentage of black students admitted under special alternative admission standards designed to compensate for the vestiges of illegal desegregation has declined from 51.3 percent in 1982 to 37.1 percent by 1986.[22]

The plan commits the State to enrolling a minimum of 8 percent black students to community college allied health programs. Of the 29 allied health programs taught at community colleges, only 19 programs met the goals in 1983–84. That number fell to 11 a year later.[23]

The State University System promised to increase the enrollment of black students entering the upper division of predominantly white universities until the proportion approximates the proportion of blacks who complete lower division work in universities and community colleges. OCR had limited information available about this goal. However, the College-Level Academic Skills Test (CLAST), which must be passed in order for students to progress to upper division classes, may be a measure of achievement in this area. Based on the 1985–86 standards for the test, the number of blacks passing all subtests of each test decreased from 67 percent in September 1984 to 63 percent in October 1985. OCR notes:

> If students who took the October 1985 test were required to meet either the 1986–89 standards or the 1989 standards, the passing rate on all subtests of all students and of black students would decline significantly. The percentage difference between the passing rate on all subtests of all students and of black students in the October 1985 test administration was 23.8%. Applying the 1986–89 standards, the percentage spread between all students and black students increased to 27.8%. The difference is 27% when the

[20] Ibid., pp. 21 and 23.
[21] Ibid., p. 31.
[22] Ibid., p. 33.
[23] Ibid., p. 39.

> 1989 standards are applied in the same group. Therefore, in the immediate future, the effect of the CLAST on black students in comparison to all students is expected to worsen.[24]

Since the implementation of CLAST, the number of black associate degree recipients from community colleges decreased from 1,748 in 1984 to 1,293 in 1985. Also, the number of black associate degree transfers to universities decreased from 383 in 1984 to 265 in 1985.[25]

Florida has also not met its plan commitment to increase the mobility of blacks between two-year and four-year institutions. OCR reports:

> a decrease in the pool of associate degree recipients applying to traditionally white institutions . . . these students were accepted at a lower rate in 1985–86 than in 1983–84. From 1983–84 to 1985–86, the total number of within-state black transfer applicants to TWI's decreased 8.2% from 1285 in 1983–84 to 1180 in 1985–86. The number of black transfer students accepted decreased 9.7% from 854 in 1983–84 to 771 in 1985–86.[26]

The State has also failed in its commitment to increase black enrollment in graduate and professional programs for students from the State University System. In academic year 1981–82, 1,244 blacks received undergraduate degrees, representing 7.43 percent of the total State graduating class. The following year, blacks represented 6.19 percent of all students entering graduate and professional schools. In 1984–85, blacks represented 8.29 percent of all undergraduate degree earners. But blacks made up only 5.27 percent of the next year's graduate and professional school enrollment. The disparity shows that, despite the number of black recipients of bachelor's degrees increasing significantly and the number of blacks entering as first-time graduate and professional students more than doubling from 1984 to 1986, their advancements lag behind those of white students in graduate and professional programs.[27]

According to OCR, black students in Florida, over time, have remained in school at lower rates than white students. For FTIC and junior college transfer students entering school in 1980, the retention rate for blacks was 12.3 percent less than for white students after four years. For FTIC classes entering in 1982, the retention rate for blacks, after two years, was 2.8 percent less than that of white students, and for junior college transfer students entering school in 1982, the retention rate after two years was 5.1 percent less than that of white students.[28]

The State plan stipulates goals for the hiring of black faculty, administrators and school board governors. The goals for professional categories not requiring doctorate degrees were not achieved in any

---

[24] Ibid., p. 46.
[25] Ibid., p. 47.
[26] Ibid., p. 50.
[27] Ibid., p. 55.
[28] Ibid., p. 69.

year of the plan by the State University System. The Community College System, however, has met its goals in this category. The University System has not met any goals in the area of faculty hiring requiring a doctorate degree, but has met its goals in the doctoral area with respect to executive and professional hires.[29] There is not wide representation of blacks on governing boards. OCR found:

> The Board of Regents (the SUS governing body) consists of 12 members and one (8.33%) is black. Each of the 28 colleges has a Board of Trustees with membership ranging from four to nine members and black representation ranging from 11% to 29%. The majority of the colleges have one black board member. South Florida and Tallahassee each have two black board members, and Florida Keys, Indian River, and Pasco-Hernando have no black board members.[30]

d. Georgia

The State failed in its main plan objective of reducing the disparity between black and white student enrollment, proportionate to their respective populations of high school graduates. In 1978, at the time of the plan's implementation, the disparity between white and black first-time student enrollment in the Georgia system of higher education was 16.83 percent. It fluctuated during the succeeding years, and was 19.88 percent in 1985–86.[31]

Georgia was also unsuccessful in its desegregation plan objective of increasing first-year black student enrollment in predominantly white senior colleges and universities. According to OCR, Georgia committed to increasing first-year black students at predominantly white institutions by 1,579 students from 1978 to 1983. The increase, if accomplished, would have resulted in approximately 3,118 first-year black students by 1982–83. The State fell far short of the goal, with 1,544 first-year black students enrolled in mainly white institutions in 1983, and 1,598 in 1985. Moreover, the percentage of first-year black students in such institutions fell from 12.78 percent in 1978 to 12.66 percent in 1985.[32]

The overall percentage of black students at TWI's increased, from 8.93 percent in 1978 to 9.56 percent in 1985 at universities, and from 11.76 percent in 1978 to 11.97 percent in 1985 at senior colleges. However, the State fell short of its respective goals of 12.77 percent by 1982 for universities and 16.70 percent by 1982 for senior colleges. The percentage of black students at junior colleges increased slightly from 12.04 percent in 1978 to 12.47 percent in 1985. This figure is short of the plan's goal of 16.65 percent for junior colleges. If enrollments at traditionally black institutions (TBI's) are considered, the overall percentage of black students in the entire university system has declined since 1978, from 15.18

---

[29] Ibid., pp. 80–83.
[30] Ibid., p. 99.
[31] "Georgia *Adams* Status Report for the University System of Georgia," Jesse L. High, Acting Regional Director, Office for Civil Rights, Region IV, U.S. Department of Education, p. 35.
[32] Ibid., p. 37.

percent to 14.76 percent in 1985, a figure less than the intended goal of 16.42 percent.[33]

The State also did not meet its goal of 14.62 percent of black students enrolled at four-year TWI's by 1982. In 1985, the total percentage of black students enrolled at four-year TWI's was 10.63, beneath the goal, but an increase above the 9.99 percent in 1979.[34]

Georgia committed to reducing the attrition rate disparity between white and black students but the State did not meet this goal. According to OCR, of 18 four-year institutions in the State system, the attrition rate for blacks increased in all but four colleges or universities.[35]

Georgia is losing ground in its campaign to maintain graduate school parity. According to OCR figures, the number of black students going on to graduate study in 1978 was 531, or a rate of 48.67 percent of the total graduates. In 1985, the number of undergraduate degree holders going on to graduate school fell to 291, a rate of 23.02 percent of the overall pool of students with undergraduate degrees. The comparable figure for white students showed that 3,490 students holding undergraduate degrees were continuing their education, a rate of 30.83 of the pool in 1978. In 1985, 2,315 of the pool went to graduate school, a rate of 21.42 percent.[36]

The rate of blacks with undergraduate degrees entering professional studies was 2.66 percent in 1978, compared to 3.32 percent in 1985. The rates for whites were 4.50 percent in 1978 and 4.83 percent in 1985.[37]

In regard to hiring practices, the State made the following commitments:

> The proportion of black faculty and administrators at each institution and on the staff of the governing board in positions not requiring the doctoral degree shall at least equal the proportion of black students graduating with appropriate masters degrees from institutions within the state system, or the proportion of black individuals with the required credentials for such positions in the relevant labor market area, whichever is greater.
>
> The proportion of black faculty and administrators at each institution and on the staff of the governing board in positions requiring the doctoral degree shall at least equal the proportion of black individuals with credentials required for such positions in the relevant labor market area.
>
> The proportion of black non-academic personnel (by job category) at each institution and on the staff of the governing board or any other state higher education entity shall at least equal the proportion of black persons with the credentials required in the relevant labor market area.[38]

---

[33] Ibid., p. 40 and 41.
[34] Ibid., p. 42.
[35] Ibid., p. 52.
[36] Ibid., p. 54
[37] Ibid.
[38] Ibid., pp. 65–66

The percentage of black school executives, administrators, and managers in positions not requiring a doctoral degree at TWI's decreased slightly from 2.26 percent in 1978 to 2.24 percent in 1985 at State universities. The plan goal for 1985 was 4.20 percent. The percentage of blacks in these positions at senior colleges increased from .58 percent in 1978 to 4.09 percent in 1985, just short of the goal. The percentage for junior colleges was 0 percent in 1978 and 3.09 percent in 1985. Three of the 11 senior colleges had no blacks in these jobs, seven had only one, and one had two. Eleven of the 14 junior colleges had no blacks in such positions. The remaining three had only one.[39]

The percentage of blacks in executive, administrative and management positions requiring a doctoral degree at TWI's increased from 3.31 percent in 1978 to 5.79 percent in 1985 at universities, from 3.44 percent to 7.24 percent at senior colleges, and from 3.51 percent to 10.71 percent at junior colleges. Only the junior colleges met the 1985 goal of 7.29 percent.[40]

Black faculty holding doctoral degrees represented 1.13 percent of such positions at universities in 1978 and 2.10 percent in 1985. They represented .55 percent of the nondoctoral faculty positions at senior colleges and junior colleges in 1978 and 3.38 percent in 1985. The goal for 1985 was 4.20 percent.[41]

Black faculty not holding doctoral degrees increased marginally from 3.40 percent to 3.95 percent of faculty at universities from 1978 to 1985. They rose from 4.57 percent to 6.32 percent between 1978 and 1985 at senior colleges and from 4.68 percent to 8.21 percent for the same period at junior colleges. Only junior colleges met the goal of 7.29 percent for 1985.[42]

OCR statistics on the hiring of new black administrators and faculty show a reversal of the modest gains made by the State in some areas. Hiring of black administrative employees, as a percentage of the total number of hires in new positions, fell from 16.31 percent in 1984 to 10.22 percent in 1985.[43]

At the time of the plan's implementation in 1978, the Board of Regents, which governs the Georgia system of higher education, had two black members on its fifteen-member board. They now have three. The composition of the board, according to OCR, consists of ten white males, two white females, two black males and one black female.[44]

e. Missouri

The State desegregation plan covers three schools. For example, Missouri made a commitment to increase annually the number and percentage of black undergraduate students, the University of Missouri-Columbia (UMC), setting a goal of 928 students, representing 5.4 percent of the student population by 1985. OCR data show that

[39] Ibid., p. 68.
[40] Ibid., p. 69.
[41] Ibid., p. 70.
[42] Ibid., p. 71.
[43] Ibid., p. 74.
[44] Ibid., p. 75.

the State had 683 students, or 3.8 percent of the undergraduate enrollment, in 1985. The State did not meet this commitment.[45]

In order to reduce the disparity between black and white student enrollments, Missouri also committed to decrease by at least 50 percent the difference between the proportion of black and white high school graduates entering UMC by 1985. The goal was to have blacks represent 7 percent of the first time entering freshmen. OCR data shows that UMC did not meet this goal, with only 3.4 percent of the incoming freshmen being black students, a decrease of the previous year's figure of 3.9 percent.[46]

UMC agreed to attain a percentage of black students enrolled in graduate courses equal to the current national percentage of bachelor's degrees awarded to black students, a goal of 6.4 percent by 1985. UMC did not meet the goal. Blacks represented 2.6 percent of its graduate students.[47]

UMC met its goals of increasing the number of first-time black enrollees in its professional schools.[48]

However, the school did not reach the retention goals outlined in the desegregation plan for black undergraduate students. The retention goal for 1984-85 was 59.4 percent, but the actual progression rate was 50.1 percent for blacks, while it was 66.8 percent for white students. OCR data for professional programs show minimal and no retention rate disparities between black and white students in master's and doctoral programs, respectively. The retention disparity was 26.8 percent in the law school, 9.2 percent in medicine, and there was no disparity in veterinary medicine.[49]

The University of Missouri-Rolla (UMR) also failed to meet the goals established in the State desegregation plan. UMR committed to a 1984 goal of 5.29 percent of the student population being black. The actual percentage of blacks in 1984 was 2 percent. In addition, UMR set a goal of 7.2 percent of the first-time entering freshmen being black in 1984. The actual figure was 4.2 percent, a rate that fell to 3.7 percent in 1985.[50]

UMR agreed to increase its enrollment of black graduate students to attain:

> the proportionate representation of blacks entering UMR's graduate programs as corresponds with the proportionate representation of blacks receiving bachelor's degrees in the state system in disciplines in which UMR offers graduate programs.[51]

The school was unsuccessful. It set a goal of having only 2.10 percent of the graduate school enrollment as black students in 1985. The actual number of blacks in graduate programs that year represented .7 percent of the total enrollment. UMR committed to in-

---

[45] "Missouri Higher Education Desegregation—Status Reports," Judith E. Banks, Acting Regional Director, Office for Civil Rights, U.S. Department of Education, Region VII, June 5, 1985, p. 1.
[46] Ibid., p. 2.
[47] Ibid.
[48] Ibid., p. 3.
[49] Ibid., pp. 13-15.
[50] Ibid., p. 1, Part II.
[51] Ibid., p. 2, Part II.

creasing the number of black transfer students to 3.1 percent by 1985, a goal it met.[52]

UMR also set a retention goal of having blacks represent 4.79 percent of its bachelor degree recipients in 1984. It did not meet the goal; only 2 percent of its graduates that year were black. The retention rate disparity between black and white students in 1984 was 12 percent, a decrease of 4.5 percent from 1980.[53] The retention rate goals for graduate student degrees were low, involving a handful of students. Nevertheless, the goals were not met.[54]

An OCR status report described UMR faculty hiring inequities for blacks:

> UMR set goals for its non-doctoral faculty based on the facts that no additional non-doctoral positions are anticipated and the high stability of present incumbents would indicate that few vacancies will occur. Where turnover is anticipated, goals were set. UMR's plan established goals for the number of black doctoral faculty to be hired, which, when accumulated, equals five persons after three years. . . .
>
> During the 1984-85 and 1985-86 academic years, UMR had 63 faculty positions available. Of these positions, 48 were positions in the School of Engineering. No black applicants were employed. In most instances, no black applicants applied. In those instances where black individuals did apply, other more qualified applicants were selected for the position. Currently, one of the 259 doctoral degree faculty members is black. Of the 51 non-doctoral degree faculty, none are black individuals.[55]

Southeast Missouri State University (SEMO) was more successful. It achieved its undergraduate enrollment goals, as outlined in the desegregation plan. It set a goal of 4.7 percent for the 1985 year and had an actual black enrollment percentage of 7.1 percent. The school also exceeded its goal of 13.9 percent of black graduate school enrollment with a real percentage of 14.78 percent in 1985.[56]

The retention rate disparity between black and white students increased from 15.1 percent in 1981 to 15.9 percent in 1985. However, SEMO appears to have reached its plan goal of a 35-percent retention rate for black students. The rate was 42.6 percent in 1984-85.[57]

f. North Carolina (Community Colleges)

OCR found that North Carolina had failed to fulfill its commitment to increase the number of black students transferring from community colleges to four-year institutions. According to OCR:

> An analysis of fall data over the previous six years shows that the system has fallen below its goal of enrolling

---

[52] Ibid.
[53] Ibid., p. 6, Part II.
[54] Ibid., p. 8.
[55] Ibid., pp. 8-9, Part II.
[56] Ibid., pp. 2-3, Part III.
[57] Ibid., p. 8, Part III.

> an additional 171 black students annually in college transfer programs. Data provided in the OCR 11,000 Series Report for the current year shows that the System has not met its 1985-86 goal to annually increase the enrollment of black students in the College Transfer Program.[58]

According to OCR, the "cumulative transfer enrollment deficiency of 1,442 [in 1985] surpassed the 1978 base data enrollment of black students (1,044) by 398 students." [59] In other words, in 1985, the State needed twice the number of students enrolled in 1978 to meet its goal of 2,241 transfer students. In 1985, the actual enrollment fell to 799 students. There were 1,044 students enrolled in 1978.[60]

At the same time, the number of white students participating in transfer programs had increased between 1978 and 1985, from 5,428 to 5,706. The percentage of total enrollment for white students in transfer programs had also increased, from 83 percent to 86 percent, during the same time period.[61]

State officials told OCR that economic and employment factors were to blame for the failure to meet the goals. However, OCR found other causes. For example, the 1978 State desegregation plan committed $12 million each year, from 1978 to 1975, to improve transfer opportunities. The State did not provide the moneys promised, instead appropriating $514,848 for the transfer program in 1980, and $200,000 in 1983.[62]

OCR also found:

> Systemwide figures . . . show that the percentage of blacks among transfer students has declined from 13.41 percent in 1978 to 11.52 percent in 1984. Absolute numbers of black student transfers to all North Carolina four-year institutions have declined by 25, while the total number of transfer students has increased by 119.[63]

The number of black students receiving associate degrees from junior colleges increased from 209 in 1978–79 to 1,200 in 1984–85. However, the representation of blacks among all degree earners decreased from 14.31 percent in 1980 to 12.95 percent in 1985, even though the number (approximately 1,200) of black degree earners remained constant.[64] Obviously, black transfer students were not improving at the same rate as white students, even though the desegregation plan was designed to achieve some form of parity.

In North Carolina, the disparity betweeen course completion rates of white students and black students continues to be a problem. In 1984, 14 of the 58 community colleges in the State system had completion rates for whites that were twice as high as for blacks. This number was reduced to 10 in 1985, but only four of the 58 schools had higher completion rates for blacks than whites.[65]

---

[58] "North Carolina *Adams* Status Report," Jesse L. High, Acting Regional Director, Office for Civil Rights, U.S. Department of Education, Region IV, June 5, 1986, p. 3.
[59] Ibid., p. 4.
[60] Ibid.
[61] Ibid., p. 5.
[62] Ibid., p. 7.
[63] Ibid., p. 11.
[64] Ibid., p. 14.
[65] Ibid., pp. 14-15.

The State plan commits North Carolina to desegregating community college faculty, administrative, and governing employees. The State set a 10.5 percent goal for black professional employment. This goal was derived from the percentage of black graduates earning master's degrees from the University of North Carolina in 1982. In the "executive/administrative/managerial" category of professional employment, more than half the insitutions did not meet the 10.5 percent goal.[66]

In the faculty category, 34.5 percent of the system schools met or exceeded the goal, but most of the schools (65.5 percent) did not. Of the 58 schools, 67.2 percent did meet their professional "others" employment goals by the fall of 1985. In general, black representation in nonfaculty professional job categories increased 1.93 percent over the life of the plan. However, black representation on school faculties, the most important category, decreased slightly from 7.32 percent to 7.18 percent.[67] When faculty are included in the overall professional category, there is a negligible increase of .38 percent in the number of blacks employed in professional positions in the North Carolina community college system.[68]

OCR found that the State has not met its goals regarding governing boards. The regional status report states:

> Black representation on the 58 institutional boards of trustees has continuously increased over the life of the *Plan.* Notwithstanding, black representation fell short of the State's black population of 22 percent by seven percent. In 1984–85, black participation on local governing boards rose to its highest level at 15.34 percent but dropped by 0.54 percent by 1985–86.
>
> According to the 1980 Census, blacks constitute approximately 22 percent of North Carolina's population. In 1978, when the *Plan* was accepted, 8 percent of the governing board members were black. By the end of 1982–83, black participation on institutional governing boards had increased to 13.91 percent.[69]

g. Oklahoma

The State of Oklahoma committed to attain a five-year aggregate goal of parity for the enrollment of black students in undergraduate institutions. The stated aim of the plan was to "attain an average annual rate of black-to-white resident first-time freshmen enrollment equivalent to the average annual rate of black-to-white Oklahoma high school senior enrollment." [70] OCR found that the "State System did not attain parity in any year of the *Plan,* with the percentage-point difference ranging from 0.6 in fall 1978 to 2.0 in fall 1985 . . . the ratio of blacks to whites in the 12th grade has remained relatively stable, whereas the ratio of blacks to whites entering undergraduate study has widened from 1:11.1 in fall 1983,

[66] Ibid., p. 18.
[67] Ibid., pp. 18 and 23.
[68] Ibid., p. 24.
[69] Ibid., p. 31.
[70] "Oklahoma Comprehensive Status Report," Taylor D. August, Regional Director, Office for Civil Rights, U.S. Department of Education, Region VI, July 25, 1986, p. 6.

to 1:12.7 in fall 1985. Equivalent ratios were not attained in any year of the *Extended Revised State Plan.*"[71]

The State also committed to "completely eliminate the disparity between the proportion of black and white first-time entering freshmen and transfer students at its traditionally white four-year institutions by 1982–83. This includes the goal of reducing the disparity at individual institutions by at least 50 percent, with the aggregate reduction reflecting no disparity." [72]

The two comprehensive State universities, Oklahoma University and Oklahoma State University, have not met their goals, although they have shown substantial increases in the number of black students enrolled. The nine other State four-year schools showed declines in black enrollment and percentages during the life of the desegregation plan. Overall, black enrollment at State institutions has declined every year since 1979.[73]

OCR notes:

> The four-year schools enrolled a total of 1,127 black first-time students in fall 1985, the lowest number of any *Plan* year. State Regents point out that in fall 1985, the two-year colleges enrolled 44% of the State System black students, as compared to only 27% in 1973. Thus, it is difficult to obtain a significant absolute increase in the number of black students in the four-year schools. This movement to junior colleges is comparable for white students in Oklahoma, and for students as a whole nationally.[74]

Oklahoma committed to eliminating any proportional disparity between the percentages of black and white students entering graduate schools in the State. According to OCR:

> . . . black bachelor's degree graduates have consistently moved into graduate school at a rate which is essentially proportionate to that for white graduates, although in any given year, their movement might be slightly greater or slightly less than their white counterparts. The distribution of black students among fields of study, however, remains uneven. Projections are generally missed in the Engineering and Architecture, and Math and Physical Sciences categories.[75]

The State has failed in its commitment to achieve parity in the entrance rates of black and white students enrolling in professional schools. The State's performance in attaining this goal has been, according to OCR, "mediocre to poor." [76] Enrolling black professional and graduate students at parity with the State's black population would require a percentage of 6.7 percent. The actual percentage was less than half this figure, and in 1985, the State failed to meet its goals for any of the six categories of professional pro-

---

[71] Ibid., p. 7.
[72] Ibid., p. 8.
[73] Ibid., p. 10.
[74] Ibid., p. 9.
[75] Ibid., p. 26.
[76] Ibid., p. 36.

grams: Medicine, dentistry, osteopathy, law, veterinary medicine, and optometry.[77]

State goals for the retainment of black students were not met. OCR found the following:

> Goals for bachelor's degrees were not attained in any of the *Plan* years; master's degrees exceeded projections in three of the eight *Plan* years; and doctoral degrees exceeded goals only during the first two years of the *Plan*. However, the percentage of black bachelor's degree graduates from the TWIs increased from 69% in 1975–76 to 79% in 1984–85. Thus black undergraduate students have demonstrated some movement from the TBI to the TWIs during the Plan Years.
>
> Projections for degrees granted are predicated on the assumption that black and white students will move through the System at the same rate. However, the overall progression rates of black students in any given year at any level remains about 90% of the progression of the white student cohort. The cumulative effect of this inequality results in fewer black graduates than projected.[78]

The State did not meet participation goals for black academic faculty and staff at either the doctoral level or nondoctoral level in any year of the desegregation plan. In 1985–86, for example, the State system was 34 positions beneath its goal at the doctoral level and 54 jobs under its goal for less-than-doctoral positions. Black, full-time academic employees comprised 4.4 percent of the total annual hires in 1985–86, a percentage higher than in 1984–85, but lower than in each of the four preceding years.[79]

Oklahoma faired better in meeting its commitment to increase the number of blacks hired in nonacademic positions. According to OCR, the majority of the four-year colleges and professional schools met or exceeded their goals in 1985–86. The State as a whole exceeded its black participation goal in this area by 5 positions.[80]

Advances have been made in the State's initiative to increase black representation on governing boards. However, even though there were eight black governing board members and one black State Coordinating Board member, due to the composition of the boards, the black board members govern only 35 percent of the State's student enrollment.[81]

h. South Carolina

The South Carolina desegregation plan states:

> The State of South Carolina sets as a goal during the life of the *Plan* to increase annually the proportion of black high school graduates throughout the state who enter two-year and four-year undergraduate public higher education institutions in the state until the proportion of blacks at

---

[77] Ibid., p. 37.
[78] Ibid., p. 45.
[79] Ibid., p. 55.
[80] Ibid., p. 71.
[81] Ibid., p. 73.

> least equals the proportion of whites who enter such institutions by the end of the Plan.[82]

The State did not meet this goal. At the end of the 1985–86 school year, when the plan expired, there was a disparity of 31.41 percent between blacks and whites entering institutions in the State system of higher education. This was an increase above the 28.13 percent disparity of the year before, albeit an improvement of the 39.66 percent disparity existing in 1981–82.[83]

The desegregation plan set a goal of a systemwide enrollment of 2,295 black high school graduates as first-time-first-year students at State schools by the end of the plan in 1985, a 150-percent increase over the number of black high school graduates entering the higher education system in 1979. The State did not meet the goal. In 1985, 1,206 black first-year students entered South Carolina schools, more than the 918 that enrolled in 1979, but far short of the goal. The number of black first-time-entering students, as a percentage of the State system school population, increased from 11.8 percent in 1981 to 15.1 percent in 1985.[84]

The first-time enrollment figures for black first-time entrants declined over the life of the plan for two-year colleges, from 26.7 percent in 1981–82 to 24.1 percent in 1985–86.[85]

The State did not meet its overall black student enrollment goals, but showed improvement over the life of the plan. The OCR Regional Status Report for the State found:

> Throughout the life of the *Plan*, actual black undergraduate enrollment has increased from 5,152 or 10% in 1981 to 5,645 or 11.1 percent in 1985. Projected goals for this time period were 10.6% in 1981 and 13.0% in 1985. In 1981, five institutions met or exceeded their individual goals. Nine of the eleven institutions increased the percentage of black undergraduate enrollment from 1981 to 1985.[86]

The State was unsuccessful in its attempt to increase the number of blacks with undergraduate degrees pursuing graduate or professional studies. In academic year 1981–82, 8.29 percent of black undergraduate degree holders went into graduate study. That number increased to 11.32 percent by 1984–85, but plummeted to 7.95 by 1985–86. The percentage of blacks pursuing professional degrees fluctuated between 2.17 percent in 1981 and 2.98 percent by 1985.[87]

The State also failed in its commitment to reduce retention rate disparities between black and white students. According to OCR, seven of the 12-State four-year schools had significantly higher retention rates for white students than black students. Although the seven schools were required to provide explanations for the retention rate disparities, OCR accepted insufficient explanations. For example, The Citadel reported that students did not like military

---

[82] "South Carolina *Adams* Status Report," Jesse L. High, Acting Regional Director, Office for Civil Rights, U.S. Department of Education, Region IV, June 5, 1986, p. 27.
[83] Ibid., pp. 27–28.
[84] Ibid., p. 32.
[85] Ibid., p. 35.
[86] Ibid., p. 38.
[87] Ibid., p. 39.

life. The Medical University of South Carolina and the University of South Carolina at Columbia simply said students left school for personal reasons. Possible Title VI violations, which led to the requirement of a desegregation plan in the first place, were not explored.[88]

Desegregation goals for black executives, administrators, and managers at TWI's were unmet by large percentages. The goal was to have blacks holding 12.03 percent of such positions in State schools by 1985. In 1985, blacks held 5 percent of the positions, less than half the goal, and less than the 6.45 percent figure in 1981.[89]

The State did not do much better with respect to its commitment of increasing black faculty at TWI's not requiring a doctoral degree. The percentage goal for 1985 was 12.03 percent, but the actual number was 4.8 percent, a small increase over the 3.4 percent in 1981.[90]

The goal for black executives, administrators, and, managers at TWI's requiring a doctoral degree was 6.96 percent for 1985. The actual percentage was 1.41 percent. There are only four blacks holding such positions in the entire State system of four-year TWI's.[91]

The goal for black faculty at TWI's requiring a doctoral degree for 1985 was 3.38 percent. The actual figure was 1.37 percent, a decrease from 1981's percentage of 1.52 percent.[92]

i. Virginia

The main purpose of Virginia's desegregation plan was to reduce the disparity between blacks and whites entering the State System of Higher Education by eliminating the vestiges of the illegal, previously dual systems. Virginia's record in accomplishing this goal is an abysmal failure. The OCR status report found the following, with respect to Virginia's performance:

> The Commonwealth committed that, for two-year and four-year institutions, the proportion of black high school graduates throughout the State who enter such institutions shall be at least equal to the proportion of white high school graduates who enter such institutions. In academic year 1978–79, there was an 8.67 percent difference between the proportion of black and white high school graduates who entered Virginia's two-year and four-year state-sponsored institutions. By academic year 1985–86, the difference increased to 20.7 percentage points. The rate at which black students are entering Virginia's system of higher education in 1985 was 30.61 percent lower than the rate in 1978 when it was 31.41 percent. The rate at which white students entered Virginia's system in 1985 was 51.21 percent; in 1978 it was 40.08 percent. While the number of white high school graduates has declined significantly since 1978, the number of black high school graduates has

[88] Ibid., p. 43.
[89] Ibid., p. 47.
[90] Ibid., p. 49.
[91] Ibid., p. 53.
[92] Ibid., p. 55.

> remained relatively stable. However, while the number of blacks entering the system has declined, from 1978 compared to 1985, the number of whites entering has increased substantially.[93]

The figures for black first-time enrollments have decreased since the plan was implemented. By the last year of the plan, such enrollments for community colleges were lower than any year since 1981. The enrollment figure in 1978 for four-year schools was 2,522. It dropped to 2,282 in 1985, the lowest number of any year of the desegregation plan.[94]

Virginia attempted to institute a transfer program for junior-college graduates to help reduce the racial disparity among its students. OCR found that this program, too, was a failure.

> OCR learned that very few blacks are enrolled in the college transfer curriculum at the two-year institutions. For example, only 69 black students (6.7 percent) received associate degrees in liberal or general studies in the two-year system during 1984-85. As indicated in Section II.F. of this report, there is great variation in the transfer policies of the four-year institutions. However, the liberal and general studies programs are completely transferable to a majority of the senior institutions. The problem of low numbers of blacks in the college transfer programs was highlighted in OCR's July 5, 1985 evaluation letter. The Commonwealth responded that "the Virginia Community College System has not viewed the encouragement of black students to college transfer courses as an appropriate role for the System." (August 26, 1985 letter, Attachment 8, p. 11.) This view is inconsistent with the overall goal of decreasing the disparity in the college going rate of black students.[95]

The State agreed to eliminate at least one-half of the 1978 disparity in the rate at which black and white students entered four-year TWI's. This goal was not accomplished. In 1978, the entrance rate for black students was 7.65 percent, compared to 29.03 percent for white students, a difference of 21.38 percent. The disparity in the entering rates increased to 23.23 percent in 1985-86.[96]

The State plan also established the goal of annually increasing the total proportion of black students attending the TWI's. The percentage has increased, from 6.02 percent in 1978 to 7.5 percent in 1985.[97]

The plan also commits Virginia to increasing the number and percentages of blacks entering graduate and professional schools. However, according to OCR:

---

[93] "Status Report of the Office for Civil Rights Concerning the Implementation of the Virginia Plan for Equal Opportunity in State-Supported Institutions of Higher Education," Jeanette J. Lim, Acting Regional Director, Office for Civil Rights, U.S. Department of Education, Region III, p. 85.
[94] Ibid., p. 86.
[95] Ibid., p. 91.
[96] Ibid., pp. 112-113.
[97] Ibid., p. 114.

> There are very few black Virginians enrolled in medicine, business and engineering . . . black graduate enrollment has declined significantly since 1978–79 (8.24%) to 404 black first-time graduate students in 1985–86 (6.77%). With regard to first professional enrollment, the number of blacks has decreased in medicine and dentistry, but increased significantly in law, particularly at the College of William and Mary.[98]

Virginia has done poorly in its commitment to increase the number of black employees at State schools. The number of black faculty at two-year schools has remained the same, at 128 or 6.4 percent of all faculty, from 1983–84 to 1985–86. There was a negligible increase at the four-year schools from 150 (2.1 percent) in 1983–84 to 175 (2.4 percent) in 1985–86.[99] In the administrative and managerial areas, the percentage of blacks in positions requiring doctoral degrees increased from 4.3 in 1978 to 7 in 1985, and the percentage of blacks holding masters degrees increased from 5.5 percent in 1978–79 to 10.8 percent in 1985.[100]

Despite a commitment to increase black representation on governing boards, such representation has remained relatively constant since 1978, when 33 blacks accounted for 14.35 percent of board members. In 1985, 37 blacks represented 16.59 percent of all board members.[101]

j. West Virginia

The West Virginia desegregation plan affects only one institution, the University of West Virginia. In regard to the success of West Virginia's desegregation plan, OCR found:

> . . . the number of black undergraduates rose in 1981–82 and 1982–83. However, during the following two years black enrollment dropped. In 1984–85 there were less blacks enrolled than in 1981–82, the first year of *Plan* implementation. Black undergraduate enrollment rose by 24 students in 1985–86, however, it is still below that of the 1982–83 year when black enrollment was at its peak.
>
> At the conclusion of the five-year desegregation *Plan*, WVU projected that 709 black undergraduate students would be enrolled, an increase of 419. However, after five years, WVU has increased its undergraduate black enrollment by only 80 students (290 in 1980–81 to 370 in 1985–86) or 19 percent of its projected increase of 419. Since the *Plan's* inception, the percentage of blacks enrolled has increased by 0.6 percentage points; from 2.2 in 1980 to 2.8 in 1985. At the conclusion of the five year *Plan* WVU has met 52.2 percent of its projected undergraduate enrollment.
>
> WVU projected that its total undergraduate enrollment would remain constant through the life of the *Plan*. The

---

[98] Ibid., p. 125.
[99] Ibid., p. 151.
[100] Ibid., p. 152.
[101] Ibid., p. 159.

total undergraduate enrollment, however, declined by 247 students, from 13,397 in 1980 to 13,150 in 1985.[102]

The State also failed in its plan to increase graduate school enrollment for black students. Although WVU enrolled 91 black graduate students in the 1981–82 year (an increase of 18 from the previous year), the 1982–83 black graduate enrollment declined by almost 50 percent. Between then and the 1985–86 academic year, black graduate enrollment remained well below the goals. WVU projected it would enroll 200 black graduate students by the end of the plan, but fell short of the goal by 132 students. Only 34 percent of its projected enrollment was met. In fact, in 1985–86, WVU enrolled five less black graduate students than were enrolled in 1980, the year prior to the *Plan*.[103]

West Virginia also committed to increasing black student enrollment in professional schools. The medical school enrolled two black students in 1981–82 and 1982–83. The enrollment declined to one student during the next two years, but increased to three, of a total 341 medical students, in 1985–86. This met the State goal.[104]

The dentistry school did not meet its goal, but the law school did. In each case, the number of blacks represented a very small proportion of the total school enrollment. In 1985–86, dentistry had two black students in a total group of 169 students, and law had 13 black students of a total group of 319.[105]

WVU had some success in its effort to increase retention rates for black students. The OCR status report notes:

> In the fall of 1985, WVU studied the number of undergraduate students enrolled in fall 1984 who returned the following year. Of the total 1984 undergraduate enrollment, approximately 86 percent returned the following fall. Of the black students, approximately 79 percent returned. Of the total freshmen class, 78 percent returned while 73 percent of the black freshmen returned.
>
> WVU also studied the number of fall 1984 first time students who returned in 1985. Of the total first-time students, approximately 79 percent returned in fall 1985. Of the first time black students approximately 73 percent returned. Of the first time freshmen, 79 percent returned. Of those who were black, 73 percent returned.
>
> Since the *Plan* began, black students at WVU have earned low [Grade Point Averages] during the freshman year. In OCR's April 23, 1985 status report it was stated that for three consecutive years more than 50 percent of the black first time freshmen received GPAs below 2.0. At the conclusion of the 1983–84 academic year 60 percent of the black freshmen earned GPAs below a 2.0. This percentage decreased to 55 percent at the end of the 1984–85 academic year. At the conclusion of the fall 1985 semester, 26

---

[102] "Final Status Report on the University of West Virginia's Compliance Plan for Equal Opportunity," Jeanette J. Lim, Acting Director, Office for Civil Rights, U.S. Department of Education, Region III, p. 11.
[103] Ibid., p. 19.
[104] Ibid., p. 22.
[105] Ibid., pp. 24 and 27.

percent of black first-time freshmen received unsatisfactory GPAs. Figures for the 1985–86 academic year are not yet available.[106]

WVU committed to increasing its number of black faculty by 29 over the life of the desegregation plan. The commitment was not met. The number of black faculty increased by one, from 16 to 17, from 1980 to 1985. This compares to the total number of faculty at WVU in 1985, which was 1,311.[107]

In 1985, WVU had 15 blacks in administrative positions, representing 2.7 percent of all school administrators. This exceeded the desegregation plan's goal by three.[108] Blacks represent 2.7 percent of the school's professional staff, filling 23 positions, three short of the plan's goal.[109]

2. OCR Task Force Evaluations

OCR appointed a special task force to review the regional status reports and the overall issue of higher education desegregation in the States whose plans expired. The internal notes of the task force obtained by the subcommittee describe failures of the States to eliminate the vestiges of illegal segregation.[110] For example, in reference to Arkansas, the notes state, "Arkansas has failed to achieve most of its numerical goals.[111] The notes indicate that major problem areas led to the failure of the State desegregation plan:

1. All projects for construction or renovation of facilities at TBI have been funded or completed, but the TBI continues to have a higher proportion of its facilities rated below average than all but one of the TWIs.
2. Most TWIs implemented undergraduate recruitment measures, but the efforts did not result in increased black enrollment.
3. Most TWIs implemented most measures to increase black retention rates, but no institutions have significantly decreased retention rate disparities between black and white students.
4. All TWIs implemented all graduate recruitment measures, but enrollment goals have not been met.
5. Most TWIs implemented employment measures, but although non-academic employment projections have been met, academic employment remains below projected levels.[112]

The notes on Georgia stated that the State's efforts to review and enhance black student recruitment policies had "many inadequacies."[113] In most institutions, only some of the promised measures

---

[106] Ibid., pp. 44–45.
[107] Ibid., p. 54.
[108] Ibid., p. 56.
[109] Ibid., p. 58.
[110] The notes are based on 1985 OCR evaluations and the 1986 regional status report.
[111] "Arkansas," Notes, Task Force on Higher Education Desegregation, Office for Civil Rights, U.S. Department of Education, undated.
[112] Ibid.
[113] "Georgia," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

were implemented. Submissions to OCR in 1985 from Georgia show fewer recruitment activities were planned. The notes also indicate that Georgia did not implement all measures to desegregate faculty, administrative staff, and governing boards.[114]

The task force also expressed concerns about Missouri, where:

> Despite reported activities, UMC [University of Missouri-Columbia] now enrolls fewer black undergraduates and first-time freshmen than it enrolled in the year prior to Plan implementation; lack of progress may be attributable in part to UMC's "reputation for insensitivity to the needs of black students," negative feedback from present and former students, and high school guidance counselors' lack of information concerning the availability of support services at UMC.[115]

In regard to North Carolina, the task force expressed concerns that black enrollment in the community college system had declined during the life of the desegregation plan, that there is no change in the enrollment patterns of black and white students transferring from two- to four-year colleges, black participation on the 58 institutional governing boards of community colleges remains lower than the State's black population, and black representation in professional employment categories has not reached the percentage of black graduates with qualifying degrees.[116]

The task force noted that Oklahoma had been criticized in the past for a "lack of vigorous and complete *Plan* implementation."[117] Efforts to recruit black students were disorganized, and in some cases recruitment organizers for graduate and professional programs were unaware that was their responsibility.[118]

South Carolina did not allocate all desegregation funds promised in its plan. Black student enrollment goals in the State were not met, and the State has not indicated what measures were implemented to attract minority students.[119]

In Virginia, the higher education task force noted serious problems in attempting to correct deficiencies at TBI's. The notes state:

> The Commonweath had failed to submit annual reports on resource comparability for two years. [Virginia State University] was experiencing resource problems in traditional basic academic programs, particularly in the basic sciences. Also, problems in the teacher education programs at [Norfolk State University] and VSU were identified. VSU library collections were deficient in all program areas other than teacher education, yet total library budget for 1984–1985 was not comparable to that of comparable TWIs. NSU and VSU had fewer earned doctorates on

---

[114] Ibid.

[115] "Missouri," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

[116] "North Carolina," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

[117] "Oklahoma," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

[118] Ibid.

[119] "South Carolina," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

> their faculties than comparable TWIs. Funds for eliminating historical deficiencies were appropriated, subject to an expenditure plan receiving written approval of the Governor, but neither NSU or VSU had received approval to use the fund.[120]

The task force also stated that black student recruitment efforts at two-year schools had failed. A recruitment tour of community colleges by four-year institutions did not reach most of the State's black students. Moreover, the increase in the percentage of black students receiving financial aid between 1978 and 1983 was much lower than the increase for white students.[121]

The task force expressed concerns that West Virginia had not provided any retention data for black students, even though other information indicated that high percentages of black students had low grade point averages.[122]

3. The Factual Summaries

OCR sent factual summaries of desegregation activities to each of the 10 States. OCR solicited comments from the States and the public, which it plans to publish in the Federal Register prior to a final determination of the status of desegregation in the States. The reports contain no findings. Instead, the summaries are recitations emphasizing the measures implemented by the States, but downplaying the measures that were not implemented and the fact that nearly all the goals set by the 10 States were not met.

A case in point is the summary sent to the State of Virginia. Based on the internal site visit reports and regional status reports, the committee believes Virginia was egregious in its failure to eliminate the vestiges of the *de jure* segregated systems of higher education. The disparity between white and black students increased more than in the other nine States. Yet in an 88-page report, OCR devotes a total of four lines to this fact. There is no analysis of the problem, nor is there much mention of Virginia's failure to implement measures designed to desegregate the State system.

The summary report ignored many of the major findings of the Region III status report on Virginia, from which the information in the summary report was supposedly culled. For example, the status report stated that Virginia established a plan to counsel black high school students on course selection and other methods of preparation to enter college. This plan was created after a State study found that black high school students were ill-prepared for college. The plan initiated the "Better Information Project" for black students. The status report noted:

> The OCR evaluation letter dated July 5, 1985 requested that the Commonwealth provide an evaluation of the Better Information Project. However, the Commonwealth's

---

[120] "Summary of Problems, Virginia Statewide Commitments, Status Per July 1985 Evaluation Letter," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

[121] Ibid.

[122] "West Virginia," Notes, Office for Civil Rights, U.S. Department of Education, Task Force on Higher Education Desegregation, undated.

response did not provide an evaluation of the effectiveness of this program in increasing the number of black students in the academic track, the problem identified in 1980 which led to the creation of the program. The Commonwealth indicated that ". . . based on the very positive responses of workshop participants and the public school counselors, the council staff judges the Better Information Project to be an excellent means of providing information about academic program planning to young black students." Although the Commonwealth judged the program to be successful, it did not propose to substantially increase funding for this project.[123]

Also, the OCR status report found:

> There was considerable confusion at the majority of two-year institutions over the commitment in the *Amended Plan* to develop a recruitment brochure aimed at black students. The Community College system understood that the State would develop the brochure for each college. However, in a November, 1984 memorandum, the coordinator of Affirmative Action of the State Council notified each institution that it should develop an institution specific brochure. At the time of OCR on-site visits, in Spring 1986, the majority of community colleges had not developed a recruitment brochure aimed at black students.[124]

This information was omitted from the summary report transmitted to the State.

The committee found that the summary report stressed positive efforts of the States and deemphasized many negative factors involved in higher education desegregation. The factual summaries contained a bias toward finding the States free of Title VI violations, despite the fact that racial identifiability, the major factor which led to findings of discrimination in 1969, still exists in the 10 States.

Substantial evidence also exists that this bias will lead OCR to ignore Title VI violations in the 10 States by hinging its final decision on the implementation of measures, and ignoring statistical factors in evaluating the success of the desegregation plans. In 1985, Harry M. Singleton, then the Assistant Secretary for Civil Rights, informed OCR staff that new guidance would be used in desegregation plan evaluations:

> In the past, the enrollment and employment sections of our evaluation letters and status reports have been focused primarily around the achievement of plan objectives and have de-emphasized the implementation of measures. When objectives were not achieved, new measures were requested, sometimes without an assessment of the reasonableness of previous implementation or consideration of whether additional measures are feasible and likely to produce better results. Although I have continually

[123] Op. Cit., "Virginia," p. 76.
[124] Ibid., p. 79.

stressed the need to shift the focus of our analysis to measures, additional work is needed.[125]

When asked if Singleton's memorandum was still OCR's policy, Alicia Coro, the Acting Assistant Secretary for Civil Rights, testified: "Whatever policy stated there is still in effect. I have not changed that policy." [126]

The committee believes this policy will have disastrous consequences for minority students in States with expiring desegregation plans. The OCR status reports and site visit reports contain evidence that the desegregation plans not only did not eliminate the vestiges of illegal segregation, in some cases, the situation has worsened for black students. If measures alone are used to justify the discontinuance of desegregation efforts, then the progress made in some States will be stopped, and reversed. And in States that are already backsliding, the descent to inequities of the past will continue.

The committee finds that OCR's policy is in flagrant disregard of congressional intent. Congress passed a Civil Rights Act that prohibits discrimination on the basis of race. The Federal Government, nearly two decades ago, found that the vestiges of such discrimination still existed in the higher education systems of several States. The Federal courts have ordered that the vestiges be eliminated. No law or court decision provides OCR the authority to ignore discrimination.

Even if OCR decides to make its conclusive Title VI finding based solely on the implementation of measures, there is still sufficient evidence that the States have not implemented their desegregation plans in good faith. In Virginia, for example, each school was supposed to provide financial aid on a proportionally equal basis. Yet the number of white students receiving financial aid increased by 71.6 percent from 1978 to 1984, while the number of black students receiving such assistance increased by only 16.4 percent.[127]

Virginia State University did not expend all funds appropriated over the life of the plan by the State legislature for program enhancement. At the time of the OCR onsite review in April 1986, only 65 percent of the funds had been committed or expended.[128]

Most community colleges in Virginia had not developed recruitment brochures aimed at black students, as required by the plan.[129]

Virginia Commonwealth University did not fulfill several commitments, including increasing graduate teaching and research assistantships available to black students, conducting research on black graduate enrollment patterns, consulting with individual departments with low black student enrollments, and working with students to identify the special needs of blacks.[130]

---

[125] Memorandum to Regions, 3, 4, 6, and 7, Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, February 11, 1985.
[126] Hearing, p. 335.
[127] Op. Cit., "Virginia," p. 83.
[128] Ibid., p. 38.
[129] Ibid., p. 79.
[130] Ibid., p. 22.

The plan also requires the State to analyze progress and describe steps to be taken to achieve success and maintain schedules set forth in the desegregation plan. Annual reports submitted to OCR in 1984 and 1985 did not include evaluations of program effectiveness and have not proposed additional measures to achieve objectives of the plan.

The OCR onsite report for the university discovered more problems. An internal school committee found that black recruitment efforts were hampered by the failure of the school to make financial resources available and the lack of a clear recruitment structure accountable for its actions. School officials admitted to OCR that they had not monitored compliance with the desegregation plan, and the school affirmative action coordinator told OCR staff he was not involved in recruitment efforts, even though it was required by the plan. Faculty, administrators, and students told OCR that the school's efforts to coordinate black student retention and provide personal counseling for black students were ineffective.[131]

The onsite visit to Virginia Commonwealth University also found numerous deficiencies in implementing measures contained in the plan. The school did not conduct student recruitment and retention research, and did not use faculty and alumni in student recruitment efforts. In addition, the university did not provide financial aid workshops for parents and students, did not send letters to parents of high school students, and did not initiate a retention study until a formal complaint was lodged with OCR.[132]

At Virginia's Christopher Newport College, an onsite report found, "The overall impression of Christopher Newport College is that they did not achieve substantial compliance with their desegregation plan and the College pays lip service only to integration."[133]

The onsite reports found similar problems at most of the schools it visited: Disparity between black and white student populations, retention disparities, failure to adhere to all plan commitments, recruitment measures not implemented, and goals unmet. In two schools, Vance-Granville Community College of North Carolina and Florida's Edison Community College, recruitment of black students is purposely not done, even though it is required by the respective State desegregation plan.[134]

Based on the information reviewed by the subcommittee, the committee concludes that the vestiges of *de jure* segregation have not been removed from the 10 States. Further enforcement actions by OCR are clearly required. The committee believes the OCR internal reports describe a situation perhaps best summarized by Julius Chambers, Director and General Counsel of the NAACP Legal Defense Fund, who testified before the subcommittee.

---

[131] On-Site Report, University of Virginia, Office for Civil Rights, U.S. Department of Education, pp. 7 and 8.

[132] On-Site Report, Virginia Commonwealth University, Office for Civil Rights, U.S. Department of Education, pp. 1–5 and 7.

[133] On-Site Report, Christopher Newport College, Office for Civil Rights, U.S. Department of Education, p. 5.

[134] On-Site Reports, Vance-Granville Community College, North Carolina, and Edison Community College, Florida, Office for Civil Rights, U.S. Department of Education.

> Our preliminary analysis shows that while there has been some significant progress and success stories, the *Adams* States are not yet in compliance with the plans to which they committed themselves almost a decade ago. Typically, in the *Adams* States, black students enroll in college in significantly fewer numbers and percentages than their white counterparts. Their representation is significantly lower than their percentage of the general population. Even for those pursuing undergraduate studies, a larger percentage of black students are enrolled in 2-year as opposed to 4-year institutions. They drop out in higher numbers compared to white students. Of those black students who graduate, an even smaller proportion enroll in graduate and professional schools.
>
> Public colleges and universities, which formerly excluded black students by law, remain virtually all-white. Often a significant percentage of the black students enrolled are on athletic scholarships and many of these students do not graduate. Black faculty and administrators at most of the traditionally white institutions are virtually nonexistent. Black individuals seeking employment in state institutions of higher education must find their opportunities in traditionally black institutions. Institutions which were established by the state for blacks remain predominantly black and underfunded, with inferior academic programs and facilities—in other words, separate and unequal.
>
> We can no more deny that these conditions are the unameliorated effects of discriminatory state action than we can continue to allow the conditions to remain unremedied.[135]

The desegregation plans, as ineffective as they have been, are the only form of statewide remedy currently available to black students. Yet, the OCR higher education task force determined that none of the 10 States whose plans have expired will continue, at minimum, the commitments established in the desegregation plans.[136] If OCR takes no action against the 10 States, the minority students in the States will have less remedial efforts working in their behalf than were contained in the desegregation plans which, in the opinion of this committee, were failures.

The failure of plans, regardless of the best intentions, is not cause to abandon the effort to remove the vestiges of *de jure* segregation in the States. The *Adams* court has ruled that new plans, or amended plans, are required when desegregation is unsuccessful. The court ordered OCR in 1977 to notify certain States that the plans failed to meet "'important desegregation requirements and . . . failed to achieve significant progress toward higher education desegregation'" [and] "'are not adequate to comply with Title VI of the 1964 Civil Rights Act.'"[137]

---

[135] Hearing, pp. 14-15.

[136] Notes on Continuation of Desegregation Efforts, Task Force on Higher Education Desegregation, Office for Civil Rights, U.S. Department of Education, undated.

[137] Hearing, p. 25.

Having established criteria for adequate desegregation plans, OCR then accepted five-year plans from the States in 1978. When those plans expired, the court ruled that "each state has not achieved the principal objectives in its plan because of the state's failure to implement concrete and specific measures adequate to ensure that the promised desegregation goals would be achieved by the end of the five-year desegregation period." [138] The plans ordered pursuant to the *Adams* finding in 1983 resulted in the amended plans which expired at the end of the 1985–86 school year.

Given this history, the committee finds that OCR is abrogating its responsibility to enforce civil rights laws, as it has continually done in the past. In the case of higher education desegregation, judicial enforcement of the law has become the norm where OCR is concerned. This is not how it should be, and is not the intent of Congress.

OCR's refusal to act in the face of strong evidence that the vestiges of *de jure* segregation continue in the 10 States is a curious contrast to recent actions by the Department of Justice in a higher education desegregation case involving the State of Louisiana. The State administers a desegregation plan required by a consent decree resulting from a civil suit brought by the Federal Government. On March 3, 1987, the Department sent a letter to the State which raised "certain concerns about the defendants' compliance with. . .the Consent Decree." [139]

For example, the State is required to increase minority race representation on higher education governing and management boards. According to DOJ, this has not been accomplished.

> . . .there has been a strong, continuing tendency to appoint or reappoint white persons to traditionally white boards and black persons to the traditionally black boards. Moreover, other-race appointments to these boards have generally been made only where the person being replaced was of the other race . . . In our judgment, the State has not made adequate efforts to carry out its commitments under the Consent Decree with respect to the Board of Regents and, especially, the LSU Board of Supervisors.[140]

DOJ also found that Louisiana had not fulfilled its commitment to eliminate the disparity in rates at which black and white high school graduates enter public higher education institutions. The disparity rate for academic year 1983–84 was 19.8 percent and the rate for 1984–85 was 16.6 percent. "This represents a dramatic increase since entry of the Consent Decree, when the disparity was approximately 6 percentage points. As the 1984 annual report suggests, this is cause for serious concern." [141]

The State also is required to eliminate disparities among the rates that black and white four-year graduates enter graduate and

---

[138] Ibid., p. 26.

[139] Letter to Counsel of Record for State of Louisiana, Re: *United States* v. *State of Louisiana, et al., Civil Action No. 80-3300-A (E.D. La.)*, from William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, March 3, 1987, p. 1.

[140] Ibid., p. 3.

[141] Ibid., p. 4.

professional schools. While DOJ notes some improvement in this area, it found that disparities still existed in certain graduate and professional programs and also remain at certain schools. DOJ said it considers "all these patterns cause for further inquiry. Specifically, we would like to know the reasons why the patterns exist and, in particular, the effect that State-erected barriers and/or inaction have had on the patterns observed." [142]

DOJ concluded that six State TWIs regressed in their recruitment of minority students over the course of the Consent Decree period, and two others showed negligible progress. The statistics on these schools, according to DOJ, "reflect serious problems." [143] The Department asked the State to improve its recruitment and retention efforts.

The State continued dual standards in its efforts to promote TWIs and TBIs, a condition the Consent Decree attempts to correct. Recruitment brochures required by the Consent Decree and brochures for pet projects of the State differed in favor of programs used primarily by white students. DOJ noted this difference as a serious problem.

> We could not help noticing the contrast between the brochures distributed pursuant to the Consent Decree in 1982-83 and 1983-84 and brochures being disseminated during the same years by the Board of Regents to publicize recently established standards for "Regents Scholar" certificates. The latter are professionally done, typeset, and printed in color on textured bond paper at a cost of 28 cents per copy. The Consent-Decree brochures were typewritten, crudely illustrated, and printed on plain paper at a cost of .067 cents for undergraduate brochures and 2.5 cents per copy for graduate brochures. We think that parents who received both brochures could easily conclude that the Board of Regents did not place a high priority on matters discussed in the Consent-Decree brochures. The problems noted above seem particularly significant in view of the difficulties that many institutions are having in increasing other-race enrollment.[144]

The DOJ letter goes on to criticize the State for failing to improve attrition rates for minority students at schools where such rates are worsening, serious failures in efforts to recruit minority students to four-year institutions, and an overall failure to eliminate the notion of segregated schools, an idea which exists as a remnant of the previously illegal, dual systems of education. DOJ notes this as a major problem.

> We consider these problems to be of serious concern if progress is to be made in reducing the remaining vestiges of racial segregation in Louisiana's public system of higher education. We think there remains a strong tendency for students graduating from public or private high schools, community colleges and other institutions in Louisiana to

---

[142] Ibid., p. 6.
[143] Ibid., p. 10.
[144] Ibid., p. 15.

> select a college or university at least in part on the basis of its past reputation as an institution for blacks or for whites. Information about educational opportunities available is necessary if these stereotypes are to be broken down.[145]

B. DOED HAS NOT ADEQUATELY INVESTIGATED A NATIONWIDE SCHEME TO BACKDATE CIVIL RIGHTS DOCUMENTS, IMPROPERLY CLOSE DISCRIMINATION INVESTIGATIONS, AND PROVIDE FALSE INFORMATION TO A FEDERAL COURT

In September 1986, the Justice Department filed a report with the *Adams* court, informing the court that:

> In July, it came to the attention of the Secretary of Education that some employees of the Department's Region I office (Office for Civil Rights) (OCR) in Boston might have engaged in the practice of backdating documents or failing to follow internal procedures required to track processing of complaints, which must be handled within certain timeframes under this court's orders of March 11, 1983 and January 17, 1985 in these consolidated cases. The Department of Education has promptly and vigorously taken action to investigate, prevent, and, if appropriate, punish those involved in any such practices.[146]

The report, and a subsequent report to the court, described the backdating as a problem affecting a small group of cases, and promised disciplinary action against the employees who participated in the backdating.

In reference to the backdating problem, Alicia Coro, then the Acting Assistant Secretary for Civil Rights, testified before the subcommittee that, "I discovered this problem during a visit to the Boston regional office on Tuesday, July 15, 1986. At that time, I was given reports of unethical and unprofessional activities with regard to efforts to meet the *Adams* timeframes."[147]

Coro also testified:

> Now at the outset, I immediately reported the matter to the Secretary and to the general counsel. At the order of the Secretary, the files in Boston were secured. Within 3 days, I sent a team of OCR senior staff to Boston to investigate fully the situation in that regional office. I believe it is significant that this OCR investigation commenced immediately and it was at my initiation.[148]

The committee finds the investigation conducted by DOED in this matter to be incomplete. Therefore, the Justice Department's contention that a small number of cases and OCR employees were involved in the backdating may have been misleading.

---

[145] Ibid., p. 28.

[146] "Report to the Court: In The United States District Court for The District of Columbia, *Kenneth Adams, et al., Plaintiffs,* v. *William Bennett, Secretary of Education, et al., Defendants,* Civil Action No. 3095-70, *Women's Equity Action League, et al., Plaintiffs,* v. *William Bennett, Secretary of Education, et al., Defendants,* Civil Action No. 74-1720, September 1986.

[147] Hearing, p. 263.

[148] Ibid.

The Acting Assistant Secretary's claim that she uncovered the backdating problem and then initiated the investigation is untrue. The subcommittee's review found evidence that she did not discover the backdating problem and, in fact, she initially attempted to prevent the DOED Inspector General (IG) from collecting information pertinent to the backdating investigation.

The subcommittee's inquiry revealed that the backdating investigation was initially discovered by the IG, not Ms. Coro. The IG was alerted to the backdating by an anonymous call to a special hotline number established for Federal employees who wish to expose wrongdoing but remain anonymous. The call was made on June 17, 1986, nearly a month before Ms. Coro claimed she discovered the problem. The caller was later identified as Rance O'Quinn, an Equal Opportunity Specialist in the OCR Region I office. Mr. O'Quinn testified before the subcommittee and willingly admitted he made the original hotline complaint.[149]

The call was described in an investigative report prepared by the IG:

> On June 17, 1986 a complaint was received by the OIG Hotline alleging that Letters of Finding (LOFS) were being backdated to reflect compliance with court ordered timeframes. During an interview conducted on July 14, 1986 Loa Bliss, then Acting Regional Director, Office for Civil Rights (OCR), Boston, advised that in the past LOFS may have been backdated. On July 16, 1986 Bliss furnished a memorandum to Alicia Coro, Acting Assistant Secretary, OCR, describing unethical or unprofessional activities in OCR, Region I including her assessment of the backdating situation.[150]

On July 14, 1986, one day before the Acting Assistant Secretary claimed she discovered the problem, the IG's office asked Ms. Bliss to furnish "specific information and Department documents relative to the investigation." [151] Ms. Coro denied the request. The IG investigative report on this matter stated, "On July 16, 1986, Alicia Coro, Acting Assistant Secretary, OCR, stated OCR would not provide certain requested documents unless she was instructed to do so by the Office of General Counsel." [152]

In her testimony before the subcommittee, Ms. Coro stated:

> That was an incident that lasted for about 15 minutes. I, of course, was very upset about what I had discovered the day before, and I didn't know that this was going on. I am a human being and was naturally upset. I was upset because of the way in which the inspector general's office asked for information. It was a lower-level staff person, who was informed that I would have to consult with the general counsel. When I spoke with the general counsel, he said yes, just go ahead. I spoke with the inspector gen-

---

[149] Hearing, p. 342.
[150] "Report of Investigation Concerning Unknown Subject(s), Office for Civil Rights (OCR), Region I, Boston, MA," Office of the Inspector General, U.S. Department of Education, November 12, 1986, p. 1.
[151] Ibid.
[152] Ibid.

> eral to discuss the matter. The issue was resolved to the extent that that very same evening we were making plans, the inspector general and myself, on the logistics of the inspector general in taking over the files. That is an incident that unfortunately the inspector general chose to put in that report.[153]

DOED records show that the records were not released to the IG until four days after the original request for the material. DOED Secretary William J. Bennett did not authorize the IG to receive the files until July 18, 1986, four days after the IG's original request.[154]

The OCR Central Office staff may have been aware of the backdating prior to the start of the IG investigation. Mr. O'Quinn testified that he notified the Director of Operations of OCR in early June 1986, prior to making the Hotline complaint, that backdating was occurring in Region I.[155] However, Ms. Coro testified that the Director had not informed her about the conversation with Mr. O'Quinn regarding the backdating.[156]

Ms. Bliss, the former Acting Regional Director for Region I, told IG investigators that she understood that Central Office staff were aware of and condoned the backdating problem.[157] Richard McCann, the former Regional Director in Region I, also told IG investigators that Central Office was aware of the backdating. According to the IG report:

> [McCann] stated that he did not receive OCR Headquarters approval for this backdating but that discussion of the activity was held with Headquarters personnel and no objections were raised. He was unable to recall the identities of the Headquarters employees with whom he discussed the backdating.[158]

Neither the IG nor OCR investigated central staff knowledge of or participation in the backdating. Ms. Coro testified she asked senior staff only if they were aware of the backdating.[159]

The committee finds that several important investigative steps were omitted regarding Central Office staff. The IG and OCR did not contact all employees in Region I to determine who they spoke to in Central Office about the backdating. At least three employees, Mr. McCann, Ms. Bliss, and Mr. O'Quinn, informed the IG they had knowledge of Central Office complicity in the affair. This omission is glaring in light of the fact that backdating was later discovered in OCR regional offices nationwide, indicating that it was not an isolated occurrence in Region I, but a systematic problem that may have emanated from Central Office as an unwritten policy.

Following the disclosure of backdating in Region I, OCR conducted a review of its 10 regional offices to determine if additional

---

[153] Hearing, p. 278.
[154] "Memorandum to the Inspector General," William J. Bennett, Secretary of Education, July 18, 1986.
[155] Hearing, p. 342.
[156] Ibid., p. 282.
[157] Op. Cit., Inspector General, Bliss Interview, July 22, 1986, p. 2.
[158] Ibid. Interview with Richard McCann, August 25, 1986, p. 3.
[159] Hearing, p. 284.

backdating had occurred. The cursory review found that backdating was a nationwide problem. In regard to the backdating of investigative Letters of Finding, an OCR report stated:

> In Region IV, discrepancies were found in 14 of 32 cases examined in that subject area; in Region VI, discrepancies were found in 18 of 26 cases; in Region VII, in 17 of 36 cases; in Region IX, in 7 of 20 cases; and in Region X, in 7 of 20 cases.[160]

The *Adams* order permits a certain percentage of cases to be "tolled," that is, to waive the time requirements if there are legitimate reasons for the investigation to be delayed, such as the unavailability of a witness. The OCR internal review found that the tolling privilege was routinely abused.

> The reviews disclosed that Regions III, IV, VI, IX and X routinely initiated tolls without an adequate basis in the tolling provisions of the *Adams* order or OCR written guidance interpreting those provisions. Cases were systematically tolled when a recipient operating in good faith simply could not meet OCR's timeframes for providing information or was otherwise delayed in providing information. In such circumstances, some Regions (IX and X) incorrectly invoked the "witness unavailability" tolling provision. In the same circumstances, other Regions (III and IV) incorrectly invoked the "denial of access" tolling provision. File documents and the comments of some of the [regional directors] suggest the likelihood that much of the incorrect tolling was the direct result of misinterpretations of the tolling provisions of the *Adams* order. An absence of monitoring the initiation of tolls on the part of some senior managers also was apparent. The result is that a large number of tolls examined in those Regions may be considered as having been incorrectly initiated. The reviews also disclosed instances where tolls continued well beyond the time that they should have, regardless of whether the toll was originally appropriately initiated under the *Adams* order.[161]

The committee finds the OCR review to be incomplete. In fiscal year 1986, OCR received 2,648 complaints[162] yet its internal review of compliance with the *Adams* timeframes examined 564 files, representing only 21 percent of the cases. The committee believes every file should have been examined because more is involved than the misleading of a Federal court, a serious a matter in itself. The improper tolling of cases can cause undue delays in correcting illegal discrimination, delays that are impermissible by law and strictly prohibited by the *Adams* order. The subcommittee's review

---

[160] "Consolidated Report of Reviews of Regional Accuracy in Performing, Recording, and Reporting Acts Critical to Compliance with Time Frames Established in *Adams* v. *Bennett (Adams)*," From Edward A. Stutman, Attorney Advisor to the Assistant Secretary for Civil Rights and Linda A. McGovern, Acting Regional Civil Rights Director, Region V, to Alicia Coro, Acting Assistant Secretary for Civil Rights, U.S. Department of Education, December 5, 1986, p. 3.

[161] Ibid., pp. 3–4.

[162] Op. Cit., "Annual Report," p. 18.

found no evidence that OCR had attempted to learn which cases were delayed improperly, and determine if illegal discrimination in those cases had been left uncorrected.

Another serious infraction committed by OCR involved contacting complainants and persuading them to withdraw complaints for the sole purpose of meeting that *Adams* due dates. Two OCR civil rights investigators in Region I told the IG that they had been ordered to ask complainants to drop cases. The IG investigative report stated:

> Vivian Bell, EOS [Equal Opportunity Specialist], stated that on two occasions she had been instructed to contact complainants and persuade them to withdraw their complaints in order to preclude the issuance of the pertinent LOF past its due date . . . Rance O'Quinn, EOS, advised he too had been instructed to contact a complainant and convince them to withdraw their complaint so that the LOF due date would not be missed.[163]

OCR has not interviewed regional staff to determine if other complainants were pressured to withdraw complaints. In fact, OCR's nationwide review entirely ignored the issue of pressuring witnesses to withdraw complaints.

The subcommittee chairman asked OCR to review its files for cases of witnesses who may have been improperly pressured to drop complaints. In response, OCR examined only one case. The office informed the subcommittee that all OCR staff involved in the case had resigned, and it could not determine if improper pressure was applied. OCR also told the subcommittee that the letter signed by the person withdrawing the complaint indicated no coercion was involved.[164]

The committee finds this response to be totally inadequate. The complainant was not contacted; instead, a letter was relied on to verify that no coercion took place. Also, OCR did not contact the staff involved. The fact that the staff had resigned is not an excuse for not attempting to locate and interview them. And there is no excuse for having examined only one case without asking regional staff if they knew of any other cases. The IG report mentions three allegations. Yet only one was reviewed.

According to testimony before the subcommittee, OCR staff involved in the backdating of documents were primarily motivated by their concerns about salary increases. It seems that their merit pay increases were tied to the court deadlines. This matter was discussed during the questioning of Mr. O'Quinn at the subcommittee's hearing.

> Mr. O'QUINN. . . . Well, it was a concern of many of the employees that they were being given "failure to meet internal timeframes"—internal timeframes are timeframes that are less than the average *Adams* timeframes. They are used as benchmarks for measurement for performance purposes. They were failing to meet the internal time-

[163] Op. Cit., Inspector General, p. 3.
[164] Hearing, p. 285.

frames, but yet they felt it was unfair that the supervisors who had control over many of these cases that they were working on were backdating them and meeting their timeframes, so they were concerned about the unfairness of the process.

Mr. WEISS. Now what hinged on these performance ratings? What was the consequence or the benefit of having not met the deadlines or having met the deadlines?

Mr. O'QUINN. OK. Well, a failure to meet a performance element in a critical element could result in a minimally, well, an unsatisfactory rating, or it could result in a minimally satisfactory rating.

The adverse effect on employees is that with an unsatisfactory rating, they could be subject to dismissal if they could not bring the performance to a level of acceptance. With a minimally satisfactory rating, these people were denied within-grade increases.

Mr. WEISS. So that it was a matter of dollars and cents?

Mr. O'QUINN. It was a matter of dollars and cents.[165]

The committee believes it is imperative for DOED to know the exact nature and extent of the backdating of documents, improper tolling of cases, and persuasion of complainants to drop charges. These actions drastically undercut the basic premise of the *Adams* order, which is to remedy OCR's historical penchant for delays. The remedy was ordered by the court to ensure that civil rights laws are enforced. Without the *Adams* order, OCR would make a mockery of the Nation's civil rights laws and, without the remedy, discrimination would exist unabated. The court cannot continue to monitor OCR's progress without knowing the extent to which it has been misled.

IV. RECOMMENDATIONS

A. OCR SHOULD ISSUE FINDINGS ON TITLE VI COMPLIANCE IN THE HIGHER EDUCATION SYSTEMS OF THE 10 STATES WHOSE DESEGREGATION PLANS HAVE EXPIRED

One full school year has passed and another has begun since the desegregation plans in the 10 States examined in this report expired. Two years have passed since most of the OCR site reports and regional status reports were completed. Yet OCR has made no determination regarding Title VI compliance in those States. The committee believes that there is extremely solid evidence that the vestiges of the illegal, dual systems of higher education in the States remain as remnants of blatant discrimination. The illegal discrimination today is more insidious, but it still exists, nevertheless. The desegregation plans have obviously failed to correct the problem, but they at least offered some minimal protections to minority students seeking higher education. Now even the minimal protections have been removed. Given OCR's history of reluctance in enforcing civil rights laws, it is likely that the Federal courts will ultimately decide the fate of higher education desegregation in

[165] Ibid., p. 339.

the 10 States. But in order for such due process to ensue, OCR must issue findings now. It has no legal basis to do otherwise.

B. OCR SHOULD CONDUCT A COMPREHENSIVE INVESTIGATION OF ALL IMPROPER ACTIVITIES IN CONNECTION WITH ATTEMPTS TO FALSIFY DOCUMENTS AND MISLEAD THE *ADAMS* COURT

The committee does not believe OCR or the DOED IG conducted a thorough investigation of the backdating of documents, improper tolling of investigative cases, and the improper persuasion of complainants to drop charges of discrimination. Each of these improper activities was intended to dupe the U.S. Federal District Court in the *Adams* case and may have resulted in delays or inaction in cases of illegal discrimination. DOED does not know the extent of the problem, if it continues, or even if investigations were halted of cases involving violations of civil rights laws. Given the high percentages of cases found to be associated with these activities, the committee believes OCR should require its staff to determine how many files were involved in improper actions and what was the involvement of Central Office staff.

SEPARATE VIEWS OF HON. JIM LIGHTFOOT, HON. FRANK HORTON, HON. ROBERT S. WALKER, HON. WILLIAM F. CLINGER, JR., HON. AL McCANDLESS, HON. LARRY E. CRAIG, HON. HOWARD C. NIELSON, HON. JOSEPH J. DioGUARDI, HON. BEAU BOULTER, HON. DONALD E. "BUZ" LUKENS, HON. AMORY HOUGHTON, JR., HON. J. DENNIS HASTERT, HON. JON L. KYL, HON. ERNEST L. KONNYU, AND HON. JAMES M. INHOFE

The title of this report, "Failure and Fraud in Civil Rights Enforcement by the Department of Education", seems to indicate that civil rights violations are going unchecked in the nation's education institutions and programs. We won't deny the fact that the Committee's investigation has revealed problems in the Office for Civil Rights (OCR). However, we believe the picture is not as bleak as the Committee suggests.

The Office for Civil Rights has an important responsibility in seeing that statutes prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or age in all programs and activities that receive funds from the Department of Education are vigorously enforced. Its duties must neither be taken lightly nor ignored.

At the same time, however, it is important that we understand the framework under which OCR operates. The *Adams* Order timeframes and reporting requirements have placed considerable burdens and pressures on the Office. It is not surprising, therefore, that problems, such as the improper handling of documents, have occurred. It is in this regard that the Committee's oversight responsibilities are important.

Moreover, we can agree with the Committee's concerns about eliminating vestiges of illegal segregation. Segregation and discrimination have no place in our society, whether it is in the workplace or in education institutions. We must strive for equal educational and employment opportunities for all Americans.

We can also agree with the Committee's recommendation that OCR promptly issue final determinations on the expired higher education desegregation plans of ten states. We acknowledge that OCR has a tremendous amount of material to review before making final determinations. However, we firmly believe that decisions should be made shortly so that if further steps are necessary, they then can be implemented.

It is at this point, though, that we must depart from the Committee's findings that the ten states under these desegregation plans have not eliminated the vestiges of illegal segregation. The review is not yet complete, and we believe the final determinations should be made following completion of a thorough review of the Office for Civil Rights.

However, we would like to express our disappointment with the Committee's position that OCR should rely on the achievement of numerical goals to determine state compliance with the expired desegregation plans. During the Subcommittee's April 23, 1987, hearing, then Acting Assistant Secretary Alicia Coro testified that OCR had not yet determined how they would evaluate these plans. But, she did make it clear that OCR would look at factors other than just the achievement of numerical goals. She indicated that OCR would take into consideration the accomplishment of measures and a state's good faith efforts to comply with the plan. We support OCR in this regard.

The 1978 criteria used to develop these higher education desegregation plans also indicate that rigid reliance on the achievement of numerical goals was not intended. The criteria state that:

> The Department is opposed to arbitrary quotas. Failure to achieve a goal is not sufficient evidence, standing alone, to establish a violation of Title VI.

In our view, the sole use of statistical data to determine if states have eliminated the vestiges of illegal segregation runs counter to the goal of eliminating discrimination. Imposing additional numerical goals on the states that have not achieved past goals will not resolve the problem of discrimination. An analysis of the measures which have or have not worked would be much more in keeping with the goal of eliminating illegal segregation than simply reviewing numbers.

Another point upon which we must separate ourselves from the Committee's findings is that the Office for Civil Rights participated in a "nationwide scheme" "to dupe the U.S. Federal Court in the *Adams* case". We agree with the Committee's views that the backdating of civil rights documents and the improper "tolling" of civil rights cases are serious offenses. We would like to point out, however, that the Office for Civil Rights did not take these problems lightly, as the Committee suggests.

In fact, soon after then Acting Assistant Secretary Alicia Coro was made aware of the backdating of documents in the Boston regional office, she initiated a nationwide review of the other regional offices to determine if backdating was occurring in other regions. In response to reports that backdating was a problem and that improper "tolling" was occurring in other parts of the country, the Acting Assistant Secretary implemented a series of corrective actions, which we note, the Committe's findings fail to mention.

One of the corrective measures was the issuance of detailed written guidance to regional offices on the implementation of the *Adams* order, in particular, the "tolling" of time frames. Since then, the number of "tolled" cases has dramatically been reduced. For example, on February 26, 1986, there were 258 cases nationwide in a "tolled" status; one year later there were only 74. This represents a 71 percent decline in the number of cases being placed on hold. We consider this a significant improvement.

We also take exception to the Committee's finding that OCR's activities to determine if problems existed in other regional offices were incomplete. We believe that if OCR implemented the Committee's recommendation that every civil rights file be examined to de-

termine if irregularities existed, then civil rights enforcement would likely stop dead in its tracks. We believe this would be a serious misallocation of scarce resources, and feel instead that OCR's swift review of the problem and implementation of corrective measures were the best way to handle this serious problem.

And finally, we must separate ourselves from the Committee's findings that this was a nationwide scheme, or concerted effort, on the part of OCR to mislead the federal court. We would like to point out that once problems were discovered, OCR reported the problems to the *Adams* Court in September 1986, with follow up reports to the Court in October 1986 and May 1987. OCR's disclosure of the problems found does not indicate to us that there was a concerted effort on the Office's part to hide information.

We strongly agree with the Committee that the problems uncovered were serious and deserved to be thoroughly investigated. One backdated document or improperly "tolled" case were one too many. We would therefore recommend to OCR that it continue to monitor closely the regional offices to make absolutely sure that documents are handled properly and promptly.

We share the Committee's conviction that our civil rights laws should be vigorously enforced by the Department of Education's Office for Civil Rights. To the extent that the Committee's investigation assists OCR in accomplishing this goal, we offer our encouragement. But, by the same token, we would hope that those who review this report will remember that although OCR is not without its faults, the Office shares our common goal of eliminating discrimination in education institutions and programs.

JIM LIGHTFOOT.
FRANK HORTON.
BOB WALKER.
WILLIAM F. CLINGER.
AL MCCANDLESS.
LARRY E. CRAIG.
HOWARD C. NIELSON.
JOE DIOGUARDI.
BEAU BOULTER.
D.E. LUKENS.
AMO HOUGHTON.
J. DENNIS HASTERT.
JON L. KYL.
ERNIE KONNYU.

ADDITIONAL VIEWS OF HON. JAMES M. INHOFE

The Department of Education's Higher Education Desegregation Plans have received much attention by this Committee. The Department's Office of Civil Rights (OCR) has focused its attention on the activities of ten States. It is very important to point out that these plans involve ten complex and dynamic situations affecting 254 separate institutions of postsecondary education.

The Office of Civil Rights has conducted extensive evaluation of the higher education institutions in question and I think it is premature of the Committee to evaluate the actions of OCR until OCR has issued evaluation letters to the States. It seems to me that it is inappropriate for the Committee to judge OCR's efforts based purely on statistical data. More variables must be taken into consideration. For example, if you were to make decisions based solely on statistical data, you would find that the state university system of New York is more segregated than Oklahoma's higher education system. In 1985, 6.4 percent of students enrolled in the Oklahoma higher education system were black, while only 8.8 percent of Oklahoma's 12th grade students were black. In comparison, 6.3 percent of the students enrolled in New York's higher education system were black, while more than 12.4 percent of New York's 12th grade students were black.

JAMES M. INHOFE.

Union Calendar No. 271

99th Congress, 1st Session - - - - - - - - - - - - House Report 99-458

INVESTIGATION OF CIVIL RIGHTS ENFORCEMENT BY THE OFFICE FOR CIVIL RIGHTS AT THE DEPARTMENT OF EDUCATION

TWENTY-FOURTH REPORT

BY THE

COMMITTEE ON GOVERNMENT OPERATIONS

together with

SEPARATE VIEWS

DECEMBER 30, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

55-539 O WASHINGTON : 1985

COMMITTEE ON GOVERNMENT OPERATIONS

JACK BROOKS, Texas, *Chairman*

DON FUQUA, Florida
JOHN CONYERS, JR., Michigan
CARDISS COLLINS, Illinois
GLENN ENGLISH, Oklahoma
HENRY A. WAXMAN, California
TED WEISS, New York
MIKE SYNAR, Oklahoma
STEPHEN L. NEAL, North Carolina
DOUG BARNARD, JR., Georgia
BARNEY FRANK, Massachusetts
TOM LANTOS, California
ROBERT E. WISE, JR., West Virginia
BARBARA BOXER, California
SANDER M. LEVIN, Michigan
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
JOHN M. SPRATT, JR., South Carolina
JOE KOLTER, Pennsylvania
BEN ERDREICH, Alabama
GERALD D. KLECZKA, Wisconsin
ALBERT G. BUSTAMANTE, Texas
MATTHEW G. MARTINEZ, California

FRANK HORTON, New York
THOMAS N. KINDNESS, Ohio
ROBERT S. WALKER, Pennsylvania
WILLIAM F. CLINGER, JR., Pennsylvania
ALFRED A. (AL) McCANDLESS, California
LARRY E. CRAIG, Idaho
HOWARD C. NIELSON, Utah
JIM SAXTON, New Jersey
PATRICK L. SWINDALL, Georgia
THOMAS D. (TOM) DeLAY, Texas
JOSEPH J. DioGUARDI, New York
RICHARD K. ARMEY, Texas
JIM LIGHTFOOT, Iowa
JOHN R. MILLER, Washington
BEAU BOULTER, Texas
JOHN E. GROTBERG, Illinois

WILLIAM M. JONES, *General Counsel*
JOHN E. MOORE, *Staff Administrator*
STEPHEN M. DANIELS, *Minority Staff Director and Counsel*

INTERGOVERNMENTAL RELATIONS AND HUMAN RESOURCES SUBCOMMITTEE

TED WEISS, New York, *Chairman*

SANDER M. LEVIN, Michigan
BEN ERDREICH, Alabama
JOHN CONYERS, JR., Michigan
HENRY A. WAXMAN, California
BARBARA BOXER, California

ROBERT S. WALKER, Pennsylvania
RICHARD K. ARMEY, Texas
JOHN E. GROTBERG, Illinois
PATRICK L. SWINDALL, Georgia

EX OFFICIO

JACK BROOKS, Texas
FRANK HORTON, New York

JAMES R. GOTTLIEB, *Staff Director*
MARC SMOLONSKY, *Professional Staff Member*
PAMELA H. WELCH, *Clerk*

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, December 30, 1985.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's twenty-fourth report to the 99th Congress. The committee's report is based on a study made by its Intergovernmental Relations and Human Resources Subcommittee.

JACK BROOKS, *Chairman.*

CONTENTS

	Page
I. Introduction	1
II. Background	2
III. Findings	6
A. OCR and DOJ have failed to obtain complete enforcement remedies in cases where serious violations of law were found	6
B. OCR ignored the internal findings of its quality assurance staff, and instead of acting on the Service's recommendations, disbanded it	18
C. OCR will now rely on a good faith standard, rather than actual achievements, in measuring the success of desegregation plans, despite its internal findings that many systems of higher education have not eliminated the vestiges of illegal dual systems of education	22
D. OCR cannot ensure that more than 300 cases settled by early complaint resolution were resolved according to Federal law and DOED regulations, and will not jeopardize future litigation involving violations of civil rights laws enacted by Congress	27
E. OCR is studying methods to substitute technical assistance for compliance reviews, a switch that OCR's own Policy and Enforcement Service considers illegal	29
F. Despite insufficient resources, OCR has not used all funds appropriated by Congress for the enforcement of Federal civil rights laws	30
G. OCR has weakened its criteria for verifying compliance information submitted by recipients of Federal education funds	31
IV. Recommendations	32
A. OCR should develop guidelines for the use of its two methods of enforcement	32
B. OCR should not rely solely on the good faith standard in measuring the success of desegregation plans	33
C. OCR should develop guidelines for the resolution of discrimination complaints by early complaint resolution and pre-letter of finding negotiations	33
D. OCR should develop guidelines ensuring that all settlements of cases where violations of law are found actually correct the violations	33
E. OCR should use the Magnet School Assistance Program more effectively as a means to monitor school systems' compliance with Federal civil rights laws	33

VIEWS

Separate views of Hon. Robert S. Walker, Hon. Thomas N. Kindness, Hon. Alfred A. (Al) McCandless, Hon. Larry E. Craig, Hon. Howard C. Nielson, Hon. Patrick L. Swindall, Hon. Thomas D. (Tom) DeLay, Hon. Richard K. Armey, Hon. Jim Lightfoot, Hon. Beau Boulter, and Hon. John E. Grotberg | 35

Union Calendar No. 271

99TH CONGRESS, *1st Session* | HOUSE OF REPRESENTATIVES | REPORT 99-458

INVESTIGATION OF CIVIL RIGHTS ENFORCEMENT BY THE OFFICE FOR CIVIL RIGHTS AT THE DEPARTMENT OF EDUCATION

DECEMBER 30, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

Mr. BROOKS, from the Committee on Government Operations, submitted the following

TWENTY-FOURTH REPORT

together with

SEPARATE VIEWS

BASED ON A STUDY BY THE INTERGOVERNMENTAL RELATIONS AND HUMAN RESOURCES SUBCOMMITTEE

On December 10, 1985, the Committee on Government Operations approved and adopted a report entitled "Investigation of Civil Rights Enforcement by the Office for Civil Rights at the Department of Education." The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTION

Under the House of Representatives Rule X, 2(b)(2), the Committee on Government Operations is authorized to "review and study, on a continuing basis, the operation of Government activities at all levels with a view to determining their economy and efficiency." The committee has assigned this responsibility, as it pertains to the Department of Education (DOEd), to the Subcommittee on Intergovernmental Relations and Human Resources.

Pursuant to its authority, the subcommittee conducted an oversight investigation of the DOEd Office for Civil Rights (OCR). OCR is responsible for enforcing Federal laws which prohibit discrimination based on race, national origin, sex, handicap, or age in all edu-

55-539 O

32-971 0 - 90 - 3

cation programs and activities funded by the Federal Government. Specifically, this enforcement power is authorized by:

Title VI of the Civil Rights Act of 1964 (race, color, national origin);

Title IX of the Education Amendments of 1972 (sex);

Section 504 of the Rehabilitation Act of 1973 (handicap); and

The Age Discrimination Act of 1975.

OCR is required to conduct investigations according to certain time frames and procedures mandated under an order imposed by the U.S. District Court for the District of Columbia in *Adams* v. *Califano*. The original order was issued in 1977, and was modified twice in 1983 as a result of *Adams* v. *Bell*, a continuation of the case.

Under formal "delegation of authority" agreements with other Federal agencies, OCR is also empowered to enforce laws within its purview in matters involving non-education Federal funds received by educational institutions. For example, OCR is responsible for enforcing Title VI in a school system whose only source of Federal funds may be a school lunch program funded by the Department of Agriculture.

The subcommittee's investigation began on August 2, 1984, when the chairman requested documents and information related to OCR's investigative activity. The investigation culminated in two days of hearings on July 18 and September 11, 1985.

Subcommittee staff reviewed the files of more than 75 cases investigated by OCR involving race, sex, and handicap discrimination in elementary, secondary, and higher education. These included 24 cases which had been referred to the Department of Justice (DOJ). Interviews were conducted of civil rights attorneys in the private and public sectors who had knowledge of the individual cases, or who participated in private, class action lawsuits. The subcommittee also examined personnel and budget records of OCR.

During the two days of hearings, the subcommittee heard testimony from representatives of the NAACP Legal Defense Fund, the National Women's Law Center, and the Disability Rights Education and Defense Fund. The former director of the OCR Policy and Enforcement Service and the DOEd Assistant Secretary for Civil Rights also testified.

II. Background

OCR's jurisdiction for enforcing the four major civil rights laws extends to a large group of Federally-funded education institutions. The laws cover all 50 State education and rehabilitation agencies, including their sub-recipients; 15,840 local school districts, 3,300 colleges and universities; 10,000 proprietary institutions; and many other institutions, such as libraries and museums.

The office uses two methods of investigating alleged violations of the civil rights laws. The primary method is the complaint investigation, which is conducted in response to complaints from individuals and groups. These investigations comprise the majority of OCR's caseload activity. During fiscal year 1984, for example, OCR received 1,928 complaints of discrimination.

The second method of investigation is the compliance review. The reviews, which are initiated by OCR, examine discrimination issues related to the civil rights laws for which OCR has enforcement responsibility. The subjects of the reviews are targeted by examining information gathered in surveys conducted by OCR. The surveys help OCR target potential areas of systemic discrimination. In fiscal year 1984, OCR conducted 212 compliance reviews.

When violations of law are found, either by investigations or compliance reviews, and the violator is unwilling to voluntarily correct the problem, OCR has two enforcement methods at its disposal. The office can seek a cut-off of Federal funds to the violating district or institution by bringing the case before an administrative law judge (ALJ). The process is called issuing a notice of opportunity for hearing. The second method available to OCR is referral of the case to DOJ, which can sue the violator to force compliance with the law.

The two methods of enforcement are rarely used by OCR. From 1981 to July 1985, OCR found 2,000 violations of law, but issued only 27 notices of opportunity for hearing, and referred just 24 additional cases to DOJ. A large majority of violations are corrected voluntarily at one of four stages of the investigative process. When a complaint is received, OCR asks the complainant and the alleged violator to voluntarily settle the matter prior to an investigation. This method of voluntary mediation is called Early Complaint Resolution (ECR), and is only used in cases involving individual complaints, not class issues. If ECR fails, OCR conducts and completes an investigation. However, prior to issuing an investigative report, called a Letter of Finding (LOF), OCR again asks the complainant and alleged violator to reach a voluntary settlement. OCR refers to this second phase of voluntary enforcement as Pre-LOF Negotiation. When Pre-LOF Negotiation fails, OCR issues the LOF to the violating institution, but even after the LOF is issued, the two parties involved in the discrimination dispute are continually encouraged to voluntarily settle the complaint. Only after the third attempt at voluntary negotiations fails does OCR use the enforcement tools of issuing a notice of opportunity for hearing or referring the case to DOJ. Even after a hearing begins, OCR leaves open the option of voluntary settlement until the time the ALJ renders a decision. OCR does not have such discretion once a case is referred to DOJ, which then has jurisdiction over the matter until it takes action or sends the referral back to OCR.

Complaint investigations must be conducted according to certain time frames mandated by the *Adams* Court. Under the *Adams* order of March 11, 1983, OCR must meet the following deadlines on complaint investigations:

> OCR must acknowledge a complaint within 15 calendar days, and inform the complainant whether the complaint is complete or incomplete.
>
> If the complaint is complete, OCR must notify the complainant within 15 days of the receipt of the complaint whether it has jurisdiction over the allegations, and whether an on-site investigation will be conducted.
>
> If the complaint is incomplete, OCR must notify the complainant within 15 days of the key elements missing in the al-

legations. If the information required to complete the complaint is not provided within 60 days, OCR may close the complaint.

Within 15 days of the receipt of a complete complaint, OCR must notify the affected institution of the nature of the complaint, and the procedures and laws to be followed in investigating the complaint, including whether an on-site visit is planned.

Findings must be issued within 105 days of the receipt of a complaint.

In cases where a violation of law is found, OCR must bring the affected institution into compliance within 195 days of the receipt of the complaint and, if corrective action is not secured by that time, OCR must initiate enforcement proceedings within 225 days after the receipt of the complete complaint.

Under the *Adams* order, OCR must also meet the following time frames on compliance reviews:

Within 90 days of the date a review commences, OCR must determine if the affected institution is in compliance with applicable laws regarding the issue investigated.

If corrective action is not achieved within 180 days of the commencement of a review resulting in negative findings, then OCR must initiate enforcement proceedings within 210 days of commencement.

The OCR investigative process cannot be comprehended without a complete understanding of the history of the *Adams* litigation. In 1969, OCR sent letters to 10 southern and border States informing them that they had failed to eliminate the vestiges of racial segregation in higher education systems. Five States ignored OCR's letters, and the other five submitted inadequate desegregation plans.

OCR did nothing to require the ten States to submit adequate desegregation plans. On July 3, 1969, Department of Health, Education, and Welfare (HEW) Secretary Robert H. Finch and Attorney General John H. Mitchell jointly announced a new policy to minimize the number of cases where Federal funds are cut off from schools in violation of Title VI. The policy also revoked previous Title VI deadlines for complete desegregation by the 1969–1970 school year, at the latest. What had been apparent now was clear public policy: OCR would not take action against illegal segregation.

On October 19, 1970, the NAACP Legal Defense and Education Fund (LDF) filed suit, alleging six different causes of action against Elliot Richardson, then Secretary of HEW, and J. Stanley Pottinger, then the Director of the Office for Civil Rights at HEW, which was moved to DOEd in 1980. The suit charged HEW with refusing to take action against school districts under court order requiring desegregation; refusing to enforce Title VI against higher education systems; refusing to initiate enforcement proceedings against school districts that had reneged on existing desegregation plans; refusing to terminate Federal funds to school districts that had been the subject of enforcement proceedings for more than two years; and refusing to abide by Supreme Court decisions in evaluating desegregation plans.

Paragraph ten of the complaint summarized the basis for the suit:

> Apart from their individual merits, the six causes of action are symptomatic of a general and calculated default by HEW in enforcement of Title VI since its passage in 1964. This failure to enforce Title VI and the Fifth Amendment's guarantee against Federal assistance to racial segregation and discrimination has been widespread, affecting thousands of public schools, colleges and universities across the country.

During the ensuing two years, each party to the litigation filed motions with the court. Finally, on November 16, 1972, the court ruled on the pending motions, and issued an opinion finding in favor of the plaintiffs. The opinion was further clarified on February 16, 1973, when the court issued a six-part order requiring OCR to begin enforcement against the ten States found in violation of Title VI; to enforce Title VI against the school districts that had reneged on their desegregation plans; to take action against 85 school districts in violation of a previous Federal court decision; to implement a program to enforce Title VI in vocational and special education programs; to monitor school districts under Federal court order; and to report to the court on a regular basis all enforcement proceedings instituted.

The plaintiffs later discovered evidence in the depositions of Federal officials that HEW had not fully complied with the order, and filed another motion, seeking further relief. On March 14, 1975, the *Adams* court entered its First Supplemental Order, which required OCR to contact more than 100 school districts still in violation of a previous Federal court decision; begin enforcement proceedings against six school districts in violation of the Emergency School Aid Act; and, for the first time, the court imposed time frames for the internal processing of Title VI violations. On July 17, 1975, the court eased the deadline requirements for cases that had been pending prior to the imposition of the March 14 order.

In 1976, two new classes of plaintiffs were added as parties to the litigation. Four parents of Mexican-American students attending public schools in Region VI were granted the right to intervene, and the Women's Equity Action League (WEAL), after an appeal, was also allowed to intervene, alleging that OCR was not enforcing Title IX. In 1977, the National Federation of the Blind was granted plaintiff's status. The new plaintiffs enabled the litigation to extend to matters involving Section 504 and Title IX, as well as Title VI.

On April 1, 1977, in response to a new plaintiff's motion, the court ordered HEW to notify six States that post-secondary education desegregation plans it had earlier accepted were inadequate, and did not comply with HEW criteria regarding desegregation plans.

On October 5, 1977, in response to a motion from the plaintiffs charging that OCR had not filled staff positions, the court found that HEW had "not taken every feasible step to obtain resources which would facilitate coming into compliance with the Court's order of June 14, 1976." The court ordered HEW to expand its re-

sources. The court also asked the parties to negotiate a settlement on the use of resources and time frames.

A settlement was negotiated which culminated in a Consent Order approved by the court on December 29, 1977. The previously ordered time frames were adopted as part of the Consent Decree without major changes. OCR's reporting requirements were expanded, and the provisions for the elimination of backlogged complaints and the exemption of certain cases were retained in the Consent Decree. The decree also required 25 procedural steps to be followed after the receipt of a complaint.

OCR's initial efforts to comply with the 1977 Consent Order were successful. The backlog of pre-order cases was nearly eliminated, but the success was short-lived. OCR began consistently missing the *Adams* deadlines in 1980, and by 1981, a backlog of 170 old complaints, some of which had been pending for as long as nine years, remained. The plaintiffs returned to court, seeking stronger relief, while at the same time, the Federal Government sought to vacate the 1977 order. The court rejected the Government's motion, and issued a new order on March 11, 1983, which had the effect of strengthening the 1977 order. The 1983 order also required OCR to initiate enforcement on numerous old cases where violations of law had been found. OCR is currently attempting to have the *Adams* order rescinded.

Although investigations and compliance reviews comprise most of OCR's workload, the office also helps formulate regulatory policy, and assists DOEd with other education activities, such as programs related to the Education of the Handicapped Act and the Vocational Education Act.

III. Findings

A. OCR and DOJ have failed to obtain complete enforcement remedies in cases where serious violations of law were found

The subcommittee's investigation included the examination of 27 enforcement cases where notices of opportunity for hearing were issued by OCR and 24 additional cases that had been referred to DOJ for enforcement. Of the 27 administrative enforcement cases, 13 had been closed at the time of the subcommittee's investigation. Of the 24 cases referred to DOJ, 16 are idle, five were sent back to OCR, one is involved in a pending suit, and two were resolved by the entering of consent decrees.

The majority of the administrative enforcement cases and DOJ referrals were initiated only after the *Adams* court ordered OCR to secure compliance in pending cases. Until the order was issued in 1983, OCR rarely sought enforcement when violations of law were found. This reluctance to enforce the law was expounded upon by Julius Chambers, Director of the LDF, in his testimony before the subcommittee:

> There has been bipartisan anathema to employing even the threat of fund termination by initiating the administrative enforcement process when voluntary negotiations fail. But it is only the willingness to use the stick of Title

VI that makes the carrot—voluntary compliance—effective.

In the early years of Title VI, the real potential of losing federal money was enough to desegregate thousands of Southern schools. After the first *Adams* order in 1973, OCR began initiating administrative actions against Southern districts whose desegregation plans did not pass constitutional muster. After the 1983 *Adams* order set deadlines for securing compliance in pending cases, OCR took 23 cases to administrative law judges and referred 18 cases to the Department of Justice. That order generated more enforcement proceedings than had occurred in all of the previous decades.[1]

OCR's reluctance to initiate enforcement proceedings, in current as well as past administrations, is poignantly illustrated by the case of the Dillion County School District Number Two in South Carolina. The district had previously operated under *de jure,* or legally required, segregated school systems. On three separate occasions—in May 1977, October 1979 and February 1982—OCR conducted on-site investigations of the school district, and found it in violation of Title VI as a consequence of ability grouping practices. Specifically, OCR found that, "students are assigned to regular classes in a racially discriminatory manner. The District's assignment practices have resulted in racially identifiable classes that have not been educationally justified." [2]

Despite some voluntary attempts to correct the problem, the Title VI violations continued in Dillon County, yet OCR did not bring enforcement action against the district. However, under the 1983 *Adams* order requiring the initiation of enforcement proceedings against violators in old cases, OCR had no choice but to finally enforce the law against Dillon County. On June 23, 1983, five years after the initial compliance review found violations of Title VI, OCR referred the Dillon case to DOJ. In the referral letter, OCR noted that, "The school district is in violation of Title VI because a considerable number of regular school classes are racially identifiable, due to the method used by the district for ability grouping. This condition has existed continually since the district initially desegregated its schools. As a result, it cannot be said that the district has satisfactorily disestablished its former *de jure* segregated school system. Moreover, although on numerous occasions the district has promised to provide to OCR an educational justification for its system of ability grouping, no adequate justification has been received . . . compliance cannot be secured by voluntary means." [3]

---

[1] Hearings before a subcommittee of the Committee on Government Operations, House of Representatives, "Civil Rights Enforcement by the Department of Education," July 18 and September 11, 1985, hereinafter referred to as Hearings, testimony of Julius Chambers, Director, NAACP Legal Defense and Educational Fund, p. 6, written statement.

[2] Statement of Findings by the Office for Civil Rights, Department of Health, Education, and Welfare, Dillon County School District #2, South Carolina, Docket #04-77-3005.

[3] Letter from Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, to William Bradford Reynolds, III, Assistant Attorney General, Civil Rights Division, Department of Justice, June 23, 1983.

In May 1983, DOJ informed OCR that it had declined the Dillon case. At the time of the subcommittee's second hearing, on September 11, 1985, OCR had still taken no action against Dillon, even though 15 months had passed since the case was declined by DOJ. Following persistent questioning by the subcommittee about the Dillon matter, Harry M. Singleton, Assistant Secretary for Civil Rights at DOEd, testified that OCR would commence enforcement proceedings against Dillon immediately.[4] Eight years after the initial violation of law was found, OCR had finally begun enforcement proceedings, but only after prodding from the *Adams* court and the subcommittee. The committee believes the delay, in light of the fact that discrimination had continued in the school district during the entire eight years, is not in accord with the intent of the civil rights laws passed by Congress.

The Dillon case was one of the 24 referrals from OCR to DOJ between January 1, 1981, and July 18, 1985, the date of the subcommittee's first hearing. All but four of the cases were referred in response to the March 11, 1983, *Adams* order, requiring that a group of old cases with outstanding violations be acted upon by September 1983. Because DOJ is not affected by the order, once a case is referred to the Department, it is no longer under the jurisdiction of the court. All of the cases referred to DOJ that have not been acted upon have remained idle at the Civil Rights Division for at least two years or more. If OCR had not referred these cases to DOJ, it would have been required to initiate enforcement, under the 1983 *Adams* order. These points were raised during the following exchange between the subcommittee chairman and the Assistant Secretary for Civil Rights:

> Mr. WEISS. Does the Justice Department have prosecutorial discretion in regard to the cases referred to it by OCR?
>
> Mr. SINGLETON. The Justice Department, as far as I understand it, Mr. Chairman, has prosecutorial discretion over any matter that it has for enforcement.
>
> Mr. WEISS. OK. However, OCR does not have such discretion, does it? If OCR finds a violation of law, it is bound to enforce the law. Isn't that correct?
>
> Mr. SINGLETON. Under the *Adams* order, we don't have any prosecutorial discretion other than whether we might take the enforcement action ourselves or send it to Justice for action.
>
> Mr. WEISS. Is the Department of Justice bound by any general court order to enforce the law regarding discrimination in educational systems and institutions?
>
> Mr. SINGLETON. I don't know, Mr. Chairman.
>
> Mr. WEISS. But OCR, as you said, is bound by the *Adams* order?
>
> Mr. SINGLETON. That's correct.
>
> Mr. WEISS. So, if OCR finds a violation involving a school district that refuses to voluntarily comply with the law or negotiate a settlement with the Department of Edu-

---

[4] Hearings, testimony of Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, September 11, 1985, transcript p. 84.

> cation, and OCR does not refer the matter to the Justice Department, then you are required to eventually take the matter before an administrative law judge, are you not?
>
> Mr. SINGLETON. Yes.[5]

Although OCR is required to begin enforcement proceedings when violations of law are found, it has sought enforcement in only one of the four cases declined by DOJ, the Dillon case. The remaining three cases have been idle at OCR since they were sent back by DOJ. For example, OCR has taken no action since DOJ declined a sex discrimination case involving the Dayton, Ohio, public school system. The case began in 1976, when OCR received a complaint from a high school teacher, alleging that she had been denied an administrative position because of her sex. On February 9, 1979, OCR completed an investigation of the complaint, finding that the Dayton school system had violated Title IX, and illegally discriminated against the complainant.[6]

On June 23, 1983, OCR referred the Dayton case to DOJ, informing the Department that the Dayton public schools "had discriminated against the complainant on the basis of her sex . . . and retaliated against her in violation of 34 C.F.R. § 100.7(e) . . ." [7]

On August 9, 1983, DOJ declined the case, primarily because the discrimination was against an individual, and also because, as DOJ informed OCR, "there is no evidence to suggest that Dayton is engaged in a continuing pattern of discrimination." [8] In the more than two years since the declination, OCR has taken no action against Dayton schools, despite the finding of discrimination.

Another case declined by DOJ involves Anna-Jonesboro Community High School District in Anna, Illinois. On June 6, 1979, OCR found that the district had violated Title IX by demoting a female administrator to a teaching position because of her sex.[9] On June 23, 1983, OCR referred the case to DOJ, stating that, "the district was not in compliance with Title IX. . . ." [10] On March 5, 1984, DOJ declined the case, contending that the complainant was the only person discriminated against, and the school district is not engaged in a pattern of discrimination. DOJ also stated that the matter was "a poor candidate for a lawsuit" because private litigation involving the complainant was unsuccessful.[11] Since the declination, OCR has taken no action against the school district, yet the violation of law has still not been corrected.

---

[5] Hearings, questioning of Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, by Rep. Ted Weiss, chairman, Intergovernmental Relations and Human Resources Subcommittee, transcript p. 80. September 11, 1985.

[6] Decision Memorandum, Antonio J. Califa, Director for Litigation, Enforcement and Policy, OCR, Department of Education, June 9, 1983.

[7] Referral letter to William Bradford Reynolds, III, Assistant Attorney General, Department of Justice, from Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, June 23, 1983.

[8] Declination letter to William Bradford Reynolds, III, Assistant Attorney General, Civil Rights Division, Department of Justice, to Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, August 9, 1983.

[9] Enforcement Activities Report, Office for Civil Rights, Department of Education.

[10] Referral letter to William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, Department of Justice, from Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, June 23, 1983.

[11] Declination letter to Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, from William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, Department of Justice, March 5, 1984.

The fourth referral declined by DOJ was a sex discrimination case against Malcolm-King College Extension School in New York City. OCR found that the school's failure in August 1982 to renew the contract of a male counselor was based on the counselor's sex, in violation of Title IX. OCR failed in its attempts to achieve voluntary compliance with Title IX, and on December 8, 1983, referred the case to DOJ. The referral letter stated that "OCR found that the College was not in compliance with Title IX of the Education Amendments of 1972. . . . This finding was based on the fact that [the complainant's] termination resulted from treatment less favorable than that received by similarly situated women." [12]

On February 24, 1984, DOJ declined the case, informing OCR that "Because there is no evidence that a pattern of discrimination exists at the College, and the evidence of discrimination against [the complainant] is not strong, we have decided not to bring suit on this referral." [13]

DOJ's declination was based on its finding that "there was no significant evidence of discrimination against the charging party" and its acceptance of the school's charge that excessive absences by the complainant resulted in "inadequate counseling." [14] These reasons appear specious, in light of OCR's definitive findings. OCR noted in an Enforcement Activities Report:

> This case involves a female supervisor's refusal in August 1982, the week school started, to renew the 10-month contract of a male counselor who had worked successfully in his job for six years, had been rated above average and recommended for a raise in April, and had been led to believe in June 1982 that his contract was being renewed. The reasons given for the action were that the complainant had excessive absences in the previous year, and that as a result he had provided inadequate service to his students. The investigation showed these reasons to be pretextual. The College's recordkeeping systems proved unreliable, and the recipient was unable to document its charge that the complainant had failed to call in on days he was ill. The failure to serve students properly that allegedly resulted was not substantiated by the College, and a comparison of all counselors' performance using criteria the college identified as the most important revealed that the complainant performed better in all categories than at least one woman, although he was the only counselor whose employment was terminated.[15]

---

[12] Referral letter to William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, Department of Justice, from Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, December 8, 1983.

[13] Declination letter to Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, from William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, Department of Justice, February 24, 1984.

[14] "Department of Education's Office of Civil Rights Referrals to the Department of Justice, January 1, 1981 through June 24, 1985," submitted to the Honorable Ted Weiss, chairman, Subcommittee on Intergovernmental Relations and Human Resources, September 9, 1985, by William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, Department of Justice.

[15] Enforcement Activities Report, November 10, '0-

The subcommittee's investigation demonstrated that OCR staff take their investigative responsibility seriously, usually perform competent and scrupulous investigations, do not issue findings lightly (and only after intensive examination of the facts) and only refer matters to DOJ when all efforts to settle cases voluntarily have been exhausted. DOJ declined the case without refuting OCR's evidence, and simply accepted the school's explanation of the matter. DOJ has discretion to decline prosecution of OCR referrals, but did not adequately support its contention that the evidence in this case was insufficient.

The three cases declined by DOJ that OCR has still not acted upon have been idle for a long time. The Dayton case was declined on August 8, 1983; the Anna-Jonesboro case on March 5, 1984; and the Malcolm King case on February 24, 1984. Although the referrals that were declined had been pending, at the time of the subcommittee's final hearing, from 18 months to more than two years, Mr. Singleton testified that he had not asked for an analysis of the cases until after the subcommittee's first hearing.[16] He also testified that his staff advised him that the cases needed to be studied further before a final determination can be made as to their final disposition.[17] The lengthy delay between the date DOJ declined the cases and the date that the Assistant Secretary for Civil Rights requested an analysis of the cases, combined with the fact that OCR did not refer the cases to DOJ until a court order forced enforcement action, weakened DOEd's enforcement posture. Moreover, the referral of cases to DOJ has proven to be an effective method of circumventing the *Adams* order and escaping the court's jurisdiction.

OCR was equally lax in its pursuit of administrative enforcement cases. The Assistant Secretary for Civil Rights willingly accepted settlements in these cases that did not adequately address the issues presented by OCR. He also interceded to weaken settlements proposed not by OCR, but by the institution found to be in violation of civil rights laws.

An enforcement action involving the Petaluma, California, High School and Elementary School Districts, and the California State Department of Education is a case in point. In response to a complaint alleging violations of Title IX against the Petaluma school system, OCR conducted an investigation and, on September 2, 1983, found the Petaluma school districts in violation of Title IX because of sex discrimination practices in the hiring of administrative personnel. An OCR report noted:

> . . . the District had maintained a pattern and practice of discrimination against women in consideration and appointment of administrators. The evidence supporting this conclusion included data establishing a statistically-significant underrepresentation of women in the District's administrative workforce. Illustrative of the nature of the statistical evidence are the facts that, prior to 1976, only two of 39 administrators in the District were female and

---

[16] Hearings, Singleton testimony, September 11, 1985, transcript p. 93.
[17] Ibid.

> that, by 1982-83, the number of females had increased to only three. By contrast, in 1981-82, approximately 32 percent of administrative positions in California schools were held by women. Buttressing the statistical data was evidence showing specific instances of District officials discouraging women from applying for positions for which they were qualified (including instances of stereotypic statements to women about their marital or parental status); examples of highly qualified women being denied even an interview for vacancies; preselection of males; departures from the District's identified procedures for evaluation of and selection from among applicants for vacancies; the District's adoption of criteria for selection after applications had been received; and the consistent use of highly subjective criteria to rate and select applicants.[18]

OCR also found that the district discriminated against females by stressing experience in coaching traditionally male interscholastic sports as a criterion for teaching position applicants, and that the district demoted an administrator to a teaching position because of her sex.[19]

OCR could not achieve voluntary compliance in the Petaluma case, and on March 9, 1984, issued a notice of opportunity for hearing, seeking the cutoff of Federal funds to the district. Petaluma subsequently proposed a settlement acceptable to OCR. But, despite Petaluma's record of discriminating against women, the Assistant Secretary for Civil Rights weakened a key provision of the proposal that would have ensured that more women were included in the job selection process. On May 31, 1985, Mr. Singleton sent a memorandum tc the acting Civil Rights Director in Region 9, where the case had been investigated. In reference to one of the settlement provisions, the memorandum stated:

> Paragraph 8 calls for a detailed procedure to ensure that women are included in the interview process used by the school district. Although I am informed that these provisions were proposed by the school district, they would be enforced by OCR. Briefly, I find these provisions to be overly complicated, and they give the appearance of an unnecessary intrusion by OCR into the administration of the school district. Furthermore, it should be possible to achieve the same objective of achieving more equitable treatment for female applicants, without applying such a rigid formula.[20]

The committee finds the justification for softening the settlement insufficient. OCR had investigated the district, aggressively pressed for a voluntary settlement, and then began an administrative enforcement action to cut off all Federal funds to the district. Certainly, these actions would be intrusive, albeit legitimate and nec-

---

[18] Enforcement Activities Report, February 28, 1984.
[19] Ibid.
[20] "In the Matter of Petaluma City Elementary School District and Petaluma Joint Union High School District, Docket No. 84-IX-19—Revisions of Settlement Proposal," Memorandum to John E. Palomino, Acting Regional Civil Rights Director, Region IX, from Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Justice, May 31, 1985.

essary for enforcing the civil rights laws. In comparison, *a settlement proposed by the district itself* hardly seems intrusive and, in fact, was a good faith attempt to correct illegal discrimination.

Thirteen of the 27 administrative enforcement cases begun between January 1, 1981, and mid-1985 were settled and closed. In most of the cases—22 of 27—enforcement started in response to an *Adams* court order. The subcommittee's examination of the settlements found that many of them did not adequately address the issues raised by OCR's investigations.

One such settlement involved an administrative enforcement case against the DeKalb County School District in Georgia. An OCR investigation found that the school system had violated Section 504 by denying an impartial hearing to a handicapped student seeking adequate educational services from the DeKalb district. The district, and later the State of Georgia, in considering an appeal, overturned a local hearing officer's finding that DeKalb had not provided the student an appropriate educational placement. An OCR report summarized the case:

> [The Student] had a history of behavior disorder and learning disability problems. Since the second grade, [the student] had not performed at his grade level in DeKalb schools. After his parents rejected a series of placements recommended by the District, they requested a hearing. The instant complaint stems from a series of events emanating from this initial hearing.
>
> Effective June 8, 1978, the Georgia State Board of Education implemented a hearing process which provided that a local hearing officer would conduct hearings involving educational placements for handicapped children. . . . On November 20, 1978, a regional hearing officer found that the DeKalb placement would not meet the child's needs and that a private placement was necessary.
>
> The local hearing officer's decision would have been final, absent an appeal by either party to civil court; however, the District appealed the decision to the State, questioning the legality of the new hearing procedures. On January 5, 1979, the State's Attorney General concluded that the June 8, 1978 procedural safeguards did conflict, as the District contended, with the Georgia Code. As a result of this determination, the State Board again revised its hearing process.
>
> . . . the new procedures were applied retroactively in the instant case and, in May 1979, the District rejected the regional hearing officer's decision, thereby triggering an automatic appeal. In September 1979, the State Board adopted its appeal officer's decision, which had held that the regional hearing officer had committed an error in finding that DeKalb could not provide [the student] an appropriate educational placement, thus affirming the District's decision.
>
> After investigating the instant complaint, OCR informed the State Board, in the July 1979 Letter of Finding, that its revised hearing procedure violated Section 504 and its

> implementing regulation, because it would allow a school board to make the final decision on a child's appropriate placement, notwithstanding the decision of the local hearing officer. Since the school board's decision is the one in contention, OCR found that the revised procedure did not comport with the impartiality provision of Section 504.[21]

On March 9, 1984, OCR filed an administrative enforcement action against DeKalb, which stated, in part, "So long as Respondent School District refuses to reimburse [the student's] parents for the costs incurred as a result of its procedural violation, it continues to be in violation of Section 504 of the Rehabilitation Act of 1973, as amended, and Federal financial assistance received by Respondent School District and such assistance for which it might be eligible to apply to receive from the U.S. Department of Education will be administered in a manner which discriminates on the basis of handicap." [22]

On February 27, 1984, an OCR attorney advised the Assistant Secretary for Civil Rights that, "The only outstanding issue in this case [DeKalb] involves Section 504 reimbursement." [23]

Nine months after the enforcement proceedings were initiated, the OCR Policy and Enforcement Service informed Mr. Singleton that DeKalb had filed suit against the complainant, and "there can be no other reason for DeKalb to have refiled the state case other than a desire to harass the student and his parents. PES therefore recommends that we move to amend the Notice to include a finding of intimidation by the district." [24]

The issues of reimbursement and intimidation were not addressed, despite OCR's contention that these were the key issues. OCR negotiated further with DeKalb and reached a settlement which resulted in a dismissal of the enforcement action. The settlement was based on the following assurances: (1) The District will abide by the State administrative due process procedures developed by the Georgia State Department of Education and approved by the U.S. Department of Education; (2) The District will not violate the procedural safeguards requirement of Section 504; and (3) The District will dismiss the pending DeKalb suit against the student and his parents.[25]

The settlement did not address any of the issues in the enforcement action. The district had already agreed to abide by the administrative due process procedure and Section 504, prior to the issuance of the notice of opportunity for hearing. The suit against the complainants was filed only in reaction to the initiation of the administrative enforcement action, and OCR should have included an added charge of intimidation against the school district. Instead, it allowed the district to withdraw an illegal action of retaliation as

---

[21] Enforcement Activities Report, February 28, 1984.

[22] "Notice of Opportunity for Hearing, In the Matter of DeKalb County School System, Decatur, Georgia, and Georgia Department of Education, Respondents," March 9, 1984.

[23] "Note to Harry M. Singleton," Gail Reizenstein, Attorney, Office for Civil Rights, Department of Education, February 27, 1984.

[24] "In the Matter of DeKalb County School System, Decatur, Georgia, Docket No. 84-504-12—Amending the Notice of Opportunity for Hearing to Include Intimidation," Frederick T. Cioffi, Acting Director, Policy and Enforcement Service, Office for Civil Rights, Department of Education, November 28, 1984.

[25] Letter from OCR to complainants, informing them of the settlement, June 24, 1985.

part of the settlement. Finally, and most importantly, OCR did not obtain reimbursement for the complainants, which OCR had always considered the main issue in this case.

Another administrative enforcement case reviewed by the subcommittee resulted from a finding of a Section 504 violation against William Paterson College of New Jersey. In response to a 1981 complaint, OCR found on June 2, 1982, that the school had discriminated against a deaf student by failing to provide her with a sign language interpreter in certain classes, in violation of Section 504.[26] Efforts to achieve voluntary compliance were unsuccessful. OCR started administrative enforcement proceedings against the college on June 2, 1983. However, on April 30, 1984, OCR filed a motion to dismiss the case because, as a result of the *Grove City* decision by the Supreme Court, [27] DOEd no longer had jurisdiction over William Paterson College. Yet, because the denial of sign language interpreters in certain situations appeared to be a statewide policy affecting other New Jersey State schools, the OCR Policy and Enforcement Service recommended that compliance reviews be conducted of all public colleges in New Jersey in order to correct an apparently systematic problem. But the Assistant Secretary for Civil Rights did not accept the recommendation, and the compliance reviews were not conducted. [28]

Mr. Singleton testified before the subcommittee that the compliance reviews were not necessary, but he did not document why there was no necessity for the reviews.[29]

The settlement reached in a different administrative enforcement case, involving the Georgia Board of Regents, was so unresponsive to the violations found by OCR that the administrative law judge took the unusual step of questioning OCR's handling of the matter. In granting OCR's request to dismiss the case, the judge wrote, ". . . it is apparent from a reading of the pleadings of the parties and from those details of the 'Plan' furnished in the motion for dismissal that even though all of the issues raised have not necessarily been settled by the 'Plan' offered by Respondents and accepted by the Assistant Secretary, contrary to the averments made . . . the Assistant Secretary does not intend to further prosecute this matter. . . ." [30]

On March 7, 1984, OCR found that the Georgia Board of Regents test for college graduates violated Title VI because students at predominantly black colleges fail the test at much higher rates than white students. When OCR brought the administrative enforcement action, it sought to force the Georgia university system to en-

---

[26] "Recommendation for Section 504 Enforcement Action Against William Paterson College, New Jersey, OCR Docket No. 02-81-2079," Antonio J. Califa, Director for Litigation, Enforcement and Policy Service, Office for Civil Rights, Department of Education, November 18, 1982.

[27] In the *Grove City* decision, the Supreme Court ruled that OCR had jurisdiction only in programs that directly received Federal funds, and no longer had jurisdiction over any programs of an institution that were not direct recipients of such funding.

[28] "Whether to proceed in William Paterson College case (83-504-1)," Antonio J. Califa, Director for Policy and Enforcement Service, Office for Civil Rights, Department of Education, April 19, 1984.

[29] Hearings, Singleton testimony, September 11, 1985, transcript p. 120.

[30] Initial decision and order in the matter of The Board of Regents of the University System of Georgia, et al., Respondents, Docket No. 84-VI-22, Compliance Proceeding Under Title VI of the Civil Rights Act of 1964, Philip M. Browning, Federal Administrative Law Judge, June 25, 1984.

hance the quality of education at the State's traditionally black colleges in the specific areas examined by the Regents' test.

The causes of the Title VI violations involving the Regents' test are complex, and are intertwined with the subtle, remaining vestiges of illegal, dual systems of education that once dominated the South. The traditionally black colleges of Georgia, in relation to the established schools in the State's higher education system, lack the resources for the attainment of equal education. These lack of resources contributed to the disparity in the test scores of students from black colleges and students from the traditionally white schools. The settlement accepted by OCR in this case expanded already existing remedial programs at the traditionally black institutions, but did not provide the type of overall changes needed to adequately correct the violations found by OCR.

Several of the administrative enforcement actions reviewed by the subcommittee pertained to violations of Title VI related to illegal segregation. One such case involved the Peoria Public School District #150 in Illinois. On February 24, 1984, OCR found the district in violation of Title VI because four schools are racially isolated, partly as a result of actions practiced by the Peoria school system.[31]

On March 3, 1985, OCR issued a notice of opportunity for hearing against Peoria, requesting the termination of Federal funds to the district.[32] Subsequent to the initiation of administrative proceedings, OCR and the district began serious negotiation of a settlement. In the negotiations, OCR was working under the instructions of the Assistant Secretary for Civil Rights that a desegregation plan for the Bakersfield, California, schools, adopted in a consent decree, would be the guidepost for formulating remedies involving Title VI student assignment illegalities.[33]

As the negotiations ensued, Peoria offered a firm desegregation plan in an attempt to settle the case. After reviewing the settlement plan, OCR's Policy and Enforcement Service notified the Assistant Secretary for Civil Rights that the plan proposed by Peoria had two major deficiencies. First, the plan did not have provisions encouraging a majority-to-minority transfer of students. Secondly, the plan did not offer substantial compensatory education programs to racially isolated schools. Both provisions were contained

[31] Statement of Findings, February 24, 1984.

[32] Notice of Opportunity for Hearing, March 3, 1984.

[33] Guidelines for Desegregation Plans, issued by Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, February 10, 1984. The guidelines state that, "The Office for Civil Rights should use the remedies outlined in the plan accepted in Bakersfield as guidance in formulating remedies in cases under Title VI involving student assignment. The plan contained the following terms: The district will continue and, to the extent possible, expand its open enrollment program so that students may permanently transfer to a school where their race is in the minority; the district will continue to permit transfers on a year-to-year basis when those transfers reduce racial isolation; until the completion of the 1985-86 school year, the district will continue the short term mini-magnet program, whereby fourth, fifth, and sixth grade students from varied racial and ethnic backgrounds come together for 1 to 2 hours a day for up to 15 days a year for programs designed to provide concentrated, short term enrichment experiences and to enhance academic achievement, social awareness, and racial harmony; the district will implement one or more full term magnet programs at the four schools which are more than 90 percent minority, whereby, to the extent possible, magnet students will be integrated into the regular instructional program at the school hosting the magnet program. The magnet programs may include: extended day care, computer assisted instruction, science, creative and performing arts, and such other programs as the district believes will attract community support; and the district will continue Project RISE, a compensatory educational program currently in place at five disproportionately minority schools. This program is premised on the belief that compensatory educational programs can assist in overcoming the adverse effects of racial imbalance."

in the Bakersfield Plan. The Policy and Enforcement Service and Region 5, which handled the investigation, recommended that settlement not be reached without the two provisions.[34] Mr. Singleton rejected the recommendations, and the plan was accepted without the transfer and compensatory education provisions.

In explaining his decision to accept a settlement weaker than the Bakersfield plan, Mr. Singleton testified:

> The school district was very clear that what they were giving us was the best they could do. And they didn't think that anything more than that would work there in the particular circumstances. I was also advised by my regional staff. Now, you see, what you're talking about is the advice I got from the headquarters staff, but I have a regional staff, too, with attorneys, very skilled attorneys who put together a number of these kinds of cases. Their advice to me was that this was a very weak case and that we could likely lose this case if we had to ultimately get into a litigation situation with it.[35]

The committee can find no statutory authority that permits districts found in violation of the law to dictate to the Department of Education which remedies will work and which will not. It is the responsibility of OCR, and if necessary, an administrative law judge, to make those decisions. Mr. Singleton's testimony that the case was weak contradicts his own staff's conclusion that:

> The evidence in this case supports both an effects case and a case of intentional discrimination by Peoria. While there are evidentiary problems of proof, these problems may be remedied through discovery. Given (1) the strength of evidence of discrimination by the district, (2) the inadequacy of the district's proposed settlement, (3) the district's refusal to negotiate further with OCR, and (4) the likelihood that the government will prevail in the Federal litigation, the best approach to this case is to litigate the Federal court case.[36]

OCR also stated administrative enforcement proceedings against the Phoenix Union High School District in Arizona, which had been found to be in violation of Title VI as a result of school assignment policies. OCR settled this case by allowing the district's incorporation into the *Castro* plan, a desegregation plan approved as part of private litigation alleging race discrimination which was filed against the district. DOJ was a party plaintiff in the suit. An internal OCR report stated that the *Castro* plan would not remedy the violations uncovered by OCR. The report said:

> OCR clearly recognizes that the steps taken by the District in response to the *Castro* order go a substantial distance in diminishing the segregative and discriminatory effects of its prior policies and decisions. These steps deserve

---

[34] "Proposed Consent Decree in Peoria School District No. 150 and Illinois State Board of Education, OCR Docket No. 84-VI-6."

[35] Hearings, Singleton testimony, September 11, 1985, transcript pp. 128, 129.

[36] "Litigation Report—In the Matter of Peoria School District No. 150 and the Illinois State Board of Education, N. 84-V-6; and Board of Education of the City of Peoria v. United States Department of Education, C.A. No. 84-1103 (C.D. Ill)," Frederick T. Cioffi, Acting Director, Policy and Enforcement Service, February 13, 1985.

> considerable commendation. However, the scope of the school closure litigation [*Castro*] was narrower than the scope of the student assignment investigation required under Title VI which examined the issue of racial isolation in all the District's schools. The *Castro* litigation sought to remediate the elimination of comprehensive educational opportunities within the area served by the schools affected by the closure decisions, namely the area served by East, North, Union, and West High Schools. The court did not directly address the issue of racial isolation in other portions of the District, and the focus of the court's findings and order was the services provided to minority students in the central city area affected by the school closures . . .
>
> After examining the data offered by the District with respect to this problem, OCR must conclude that the District has failed to take sufficient steps toward elimination of racial/ethnic isolation in all parts of the District and therefore remains in violation of Title VI.[37]

Despite these concerns, OCR acquiesced, and allowed the case to be settled by adding it to the *Castro* order.

In summary, the committee believes that OCR has failed to meet its enforcement responsibilities. This is a direct result of cases languishing for years at DOJ, and the acceptance of settlements that do not provide the kind of anti-discriminatory relief Congress had intended when it enacted the four major laws enforced by the DOEd. By refusing to fully use its authorized powers of enforcement, OCR effectively sends a message to the recipients of Federal education funds that the U.S. Government is not willing to use its complete enforcement authority when violations of civil rights laws are found.

B. OCR IGNORED THE INTERNAL FINDINGS OF ITS QUALITY ASSURANCE STAFF, AND INSTEAD OF ACTING ON THE SERVICE'S RECOMMENDATIONS, DISBANDED IT

OCR had a Quality Assurance Staff (QAS) in headquarters that was established to review investigations and policies to ensure that OCR operated properly, and that its actions were supportable by the civil rights laws and DOEd's own regulations.[38] Mr. Singleton

---

[37] "Summary of Enforcement Activities for the period March 5-March 9, 1984, No. 09-79-5068, Phoenix Union High School District, Phoenix, Arizona."

On November 7, 1985, the Office for Civil Rights provided the following explanation about the Phoenix Union settlement: "During the course of the administrative enforcement action, the Phoenix Union High School District submitted a compliance plan to OCR that fully addressed the substantive OCR violation. By memorandum dated October 5, 1984, the then Director for Policy and Enforcement Service of OCR, Antonio Califa, recommended that the plan be accepted and that the plan be incorporated with the *Castro* Order. The impetus for incorporation came from Phoenix Union. The district had expressed concern that some of its student assignment policies were governed by the *Castro* Order and that failure to incorporate might result in the district's being subject to two enforcement agencies, DOJ and OCR, with the possibility of conflicting goals. The decision to refer the case to DOJ for incorporation of the plan resulted from the recommendations of the Policy and Enforcement Service contained in the October 5 memorandum referenced above and in other exchanges on the subject over a period of several months. The incorporation resulted in no diminution in remedial action since all of the substantive provisions of the plan proposed by OCR staff were incorporated."

[38] Hearings, Singleton testimony, September 11, 1985, transcript p. 45.

testified that he disbanded QAS in June 1985 because "of pressing needs. I started detailing people out over a period of time into other services." [39]

The last major project of QAS was completed in 1984, when it released a report, "Quality Assurance Report of Regional Performance in Processing Cases Closed in May/June 1983." The report was based on a review of 116 cases closed by OCR's regional offices during May and June 1983. QAS found an error and defect rate for all cases reviewed of 28 percent.[40] The report also contained 11 recommendations for headquarters to improve the OCR operation.[41]

The report was submitted to Mr. Singleton, but he attempted to disavow any knowledge of it, stating, "I don't recall it. I may have received it, but, you know, I receive a lot of memos over the course of a period of time. And I may have received it but I just don't remember it." [42]

One of the QAS recommendations was that a memorandum of understanding between the Department of Education and the Architectural and Transportation Barriers Compliance Board be implemented. The memorandum was signed in 1980, and was designed to coordinate overlapping jurisdiction between the Department and the Board. QAS noted in its report that, "In the past, some of our investigators have not distinguished between the Section 504 requirements under § 104.22 for program accessibility in facilities pre-dating the regulation (existing facilities) and the requirements under § 104.23 for architectural accessibility in facilities constructed or altered after the effective date of the regulation (new facilities). The Section 504 regulation does not necessarily require structural alteration to provide program accessibility in existing facilities. Further, if alterations are necessary, they are not as extensive as the requirements for new facilities." [43]

QAS also noted that the confusion resulting from the overlapping jurisdiction was caused by the lack of training of OCR staff on these issues, and that training was part of the memorandum of understanding that was never implemented.[44]

When asked about the memorandum of understanding, Mr. Singleton testified: "I know nothing about the 1980 memorandum . . . and I know nothing about this particular issue. I don't recall that."[45]

On March 2, 1984, the Director of QAS sent a memorandum to Mr. Singleton, informing him that, although the Title IX and Section 504 regulations require the adoption of grievance procedures for employees of Federal funding recipients, OCR has no standards for assessing the grievance procedures required by the regulations.[46] The lack of standards has caused problems. For example,

---

[39] Ibid., p. 44.
[40] "Quality Assurance Report of Regional Performance in Processing Cases Closed in May/June 1983," Quality Assurance Service, Office for Civil Rights, Department of Education, 1984.
[41] Ibid.
[42] Hearings, Singleton testimony, September 11, 1985, transcript p. 14.
[43] Memorandum from Burton M. Taylor, Director, Quality Assurance Staff, to Assistant Secretary for Civil Rights, Harry M. Singleton, November 23, 1983.
[44] QAS Report, 1984.
[45] Hearings, Singleton testimony, September 11, 1985, transcript p. 16.
[46] "Standards for Assessing Grievance Procedures," Burton M. Taylor, Director, Quality Assurance Staff, March 2, 1984.

the Granville County, North Carolina, School District, in response to OCR's finding that it denied due process to a former employee who had been forced to resign, submitted a grievance procedure plan to OCR. The plan excluded former employees and, therefore, did not correct the discrimination against the complainant in this case. Yet, because OCR has no standards for assessing grievance procedures, the plan was accepted, even though the original complainant's grievance was not addressed.[47]

When questioned about the memorandum, Mr. Singleton testified, "I don't recall this particular memo."[48] When asked if the QAS recommendation concerning grievance procedures was adopted, Mr. Singleton stated, "I don't know. I'm telling you I don't remember the memo. I cannot remember this." [49]

On May 15, 1984, QAS sent a memorandum to the Assistant Secretary for Civil Rights about Title IX investigations involving interscholastic athletics. The memorandum stated:

> In reviewing a Title IX interscholastic athletics case, the Quality Assurance Staff has found that there are limited instructions to regional elementary and secondary education staff on how to conduct complaint investigations or compliance reviews in this area, and to an extent, the instructions are contradictory . . . This matter came to our attention during an assessment of an elementary and secondary education case. This case was an investigation of whether the recipient district was providing students a selection of sports and levels of competition that effectively accommodated the interests and abilities of students of both sexes. The region took a limited approach in selecting factors to be reviewed in the investigation, and performed rather cursory analyses of the related areas.[50]

In response to questions from the subcommittee chairman about what actions OCR took as a result of the QAS concerns about interscholastic athletics investigations, Mr. Singleton said, "I don't recall, Mr. Chairman." [51]

The QAS report also provided case summaries of investigations that QAS found were handled improperly. One such case involved a Title VI complaint against the Lowell, Massachusetts, public schools. Complainants alleged race discrimination because the district had discontinued a voluntary desegregation plan after one year. QAS noted that, "this case was assessed as a defect because Region I closed it based on the withdrawal of a class complaint after the initiation of the investigation. The [Investigations Procedures Manual] at § II-3.24 states that a class complaint cannot be administratively closed at the pre-determination stage of an investigation. Moreover, although the region closed the case based on a withdrawal, the file indicates that four signatories to the complaint

---

[47] Ibid.
[48] Hearings, Singleton testimony, September 11, 1985, transcript p. 20.
[49] Ibid., transcript p. 25.
[50] "Guidance to Regions for Conducting Interscholastic Athletics Investigations," Burton M. Taylor, Director, Quality Assurance Staff, Office for Civil Rights, Department of Education, May 15, 1984.
[51] Hearings, Singleton testimony, transcript p. 25.

had not withdrawn their complaint." [52] QAS also noted that the region could not determine if a remedial action plan was necessary in this case because no investigation was conducted.[53]

In another case, QAS found:

> [Region 1] conducted an investigation of St. Joseph the Provider College to determine whether the College discriminated against the complainant on the basis of his handicap (learning disability) by excluding him from the tutorial program, and, as a result, dismissing him from the College. The region found that the complainant was not a qualified handicapped person and the College had no obligation to provide him support services.
>
> QAS assessed this case as a defect because the region did not address the central issue of the complaint and the findings were not supported adequately. The central issue of the complaint concerned exclusion from support services provided by the College and later dismissal from the College. Also, related testing and counseling issues were not identified or addressed during the investigation. These problems indicated a failure to analyze information in accordance with the Section 504 regulation. The region incorrectly interpreted § 104.4(k)(3) of the regulation regarding the qualified handicapped status of the complainant.[54]

QAS also examined a 1983 compliance review of admissions and recruitment at the New England School of Law, where OCR found that the school's recruitment practices were nondiscriminatory. However, QAS found that minority enrollment had declined at the school, that the school bypassed secondary schools with high minority enrollments during recruiting trips, and that OCR had not even conducted an on-site review of the school.[55]

During a review of cases in Region 1, QAS discovered that the Region had misinterpreted the criteria for closing complaints which were not supported by complete information. The Region had closed individual cases related to a class complaint because the latter was incomplete, even though the former contained solid information. As QAS reported, the Regional officials "believe that if sufficient information is not provided about a 'significant allegation' in the complaint to make that allegation complete, the entire complaint must be considered incomplete. QAS believes this is an incorrect interpretation of the [Investigations Procedures Manual]. This interpretation undermines the complaint process and can result in the uninvestigated closure of fully stated allegations of discrimination." [56]

QAS' assessment of a case involving the Omaha, Nebraska, school system found that OCR had closed a complaint against the district which alleged an unfair due process system for handicapped children, a violation of Section 504, solely because the complainants had moved to another locality. QAS noted that OCR did

---

[52] QAS Report, 1984.
[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] Ibid.

nothing to ensure that, in the future, the school system would comply with Section 504.[57]

In each of the aforementioned cases, Mr. Singleton, under questioning, testified that he could not recall any of the cases, but said he was not sure that the facts presented by QAS were correct. However, he admitted that no one had examined the facts to determine if QAS' evaluations had merit.[58]

Mr. Singleton also testified that QAS was considered "more of a nuisance than it was a help," and that a good deal of the work prepared by QAS was the result of "people . . . trying to earn outstanding ratings and part of that is the kind of paper that you generate." [59] He further testified that he had appointed a task force more than a year ago to develop a new format for quality assurance. However, he stated that he could not recall if the task force had submitted any oral or written reports to him concerning its review, and that he could not recall who comprised the task force, nor how many people served on it.[60]

QAS raised numerous serious and important concerns about the handling of OCR investigations. Yet Mr. Singleton did not corroborate or even respond to the QAS findings and recommendations. He testified that QAS was considered a "nuisance." In fact, his main reaction to the findings was to disband QAS, without replacing it with an organized system to monitor the internal workings of OCR. He appointed a task force, whose membership he could not recall and, which, after more than a year, had not issued any formal recommendations about quality assurance. Based on the evidence, the committee concludes that when Mr. Singleton received negative reports from QAS, he failed to examine them in accordance with good management practices.

C. OCR WILL NOW RELY ON A GOOD FAITH STANDARD, RATHER THAN ACTUAL ACHIEVEMENTS, IN MEASURING THE SUCCESS OF DESEGREGATION PLANS, DESPITE ITS INTERNAL FINDINGS THAT MANY SYSTEMS OF HIGHER EDUCATION HAVE NOT ELIMINATED THE VESTIGES OF ILLEGAL DUAL SYSTEMS OF EDUCATION

The *Adams* order which governs a substantial part of the OCR operation resulted from OCR's failure to enforce the law when it found Title VI violations in the higher education systems of ten States. Only after a lawsuit forced OCR's hand did it require most of these States to enact desegregation plans. The long-standing desegregation plans for Florida, Georgia, North Carolina (community colleges), Arkansas, and Oklahoma, known as the "First Tier States," expire at the end of 1985. OCR is evaluating the success of these plans, and will decide sometime in 1986 whether new plans or a modification of the old plans will be necessary.

In evaluating the plans, OCR has dramatically altered its methods of measuring the success of the desegregation efforts. On February 11, 1985, the Assistant Secretary for Civil Rights issued guid-

---

[57] Ibid.
[58] Hearings, Singleton tesimony, September 11, 1985, transcript pp. 32-39.
[59] Ibid., transcript pp. 42-43.
[60] Ibid., transcript pp. 44-47.

ance to Regions 3, 4, 6, and 7 on evaluating higher education desegregation plans. The guidance stated:

> In the past, the enrollment and employment sections of our evaluation letters and status reports have been focused primarily around the achievement of plan objectives and have de-emphasized the implementation of measures. For example, in many instances when objectives were achieved, there was little discussion of the implementation of measures. When objectives were not achieved, new measures were requested sometimes without an assessment of the reasonableness of previous implementation or consideration of whether additional measures are feasible and likely to produce better results. Although I have continually stressed the need to shift the focus of our analysis to measures, additional work is needed." [61]

Mr. Singleton affirmed this guidance in his testimony before the subcommittee when asked if a State will be considered in compliance if it has implemented its plan in good faith, even if the State has not eliminated the vestiges of a previously dual system of higher education. He responded:

> I will make the decision . . . based upon the plan that the State has put into effect to eliminate the vestiges. If the State has done everything that it is committed to do to increase minority enrollment, let's say, at a TWI, traditionally white institution—it has done everything that it has committed itself to do and has done everything else that it could reasonably be expected to do, and it still hasn't achieved its goal, then to hold that State culpable for that . . . would be making that goal a quota. And I am not going to do that. This administration does not support quotas and I will not conduct my affairs of this office in that fashion as a source to give quotas credence.[62]

OCR's decisions on the desegregation plans will not necessarily be final. The *Adams* plaintiffs will play a major role in monitoring OCR's evaluations and decisionmaking. In testifying about OCR's role in the area of higher education desegregation, the director of the Legal Defense Fund provided an historical perspective to the plans of the First Tier States:

> The 1973 [*Adams*] Order . . . directed that OCR obtain plans from states that had formerly operated *de jure* [dual] systems of public higher education, which plans would disestablish the separate and unequal system of post-secondary education and enhance the historically black colleges. The court of appeals stressed that state-wide measures must be required to eliminate state-wide vestiges of segregation in state systems of higher education. The plans . . . as the court put it . . . proved to be "mere pieces of paper," lacking any concrete promise of desegregation. Therefore,

---

[61] Memorandum to Regions, 3, 4, 6, and 7. Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education. February 11, 1985.
[62] Hearings, Singleton testimony, September 11, 1985, transcript p. 55.

the court ordered OCR to require the states to submit new desegration plans.

Because the 1974 plans contained widely different standards, the court ordered OCR to publish criteria setting forth in clear terms the general desegregation requirements that would constitute the conditions for the acceptance of new plans from the states. The criteria were initially published in 1977 and slightly revised in February 1978. Inherent in them was a requirement that specific commitments be made by the states in the areas of (1) admission, (2) recruiting and retention of students, (3) the placement and duplication of program offerings among institutions, (4) the role and enhancement of black institutions, and (5) the changes in the racial composition of faculties.

The criteria directed "not only that each institution pursue nondiscriminatory student admission and faculty and staff employment practices, but also that the state system as a whole develop a comprehensive and coordinated statewide desegregation plan embodying those specific affirmative, remedial steps which will prove effective in achieving significant progress toward the disestablishment of the structure of the dual system and which address the problem of systemwide racial imbalance." The criteria further set forth numerical goals and timetables by which to measure progress toward elimination of the effects of the unconsitutional, *de jure,* racial segregation.[63]

Following publication of the revised criteria, the court ordered each State to submit a new or revised plan. The new plans for the First Tier States were submitted and accepted in 1978 and 1979. The North Carolina four-year university system, however, refused to submit an acceptable plan, and OCR began administrative enforcement proceedings against the State. While the matter was before an administrative law judge, Education Secretary Terrel Bell accepted a plan from the State in 1982 that did not meet the revised criteria.[64]

Prior to this decision, at the time the revised criteria were finalized, OCR began investigations in seven other States which had previously used dual systems of higher education. OCR moved so slowly in examining these States (Alabama, Delaware, Kentucky, Missouri, Ohio, South Carolina, Texas, and West Virginia) that the Legal Defense Fund returned to court and, as a result, obtained an order in December 1980 which required OCR to issue Letters of Finding by January 15, 1981.[65]

In 1982, the Legal Defense Fund found that the First Tier States, as well as the second group of seven States, had either not fully implemented their plans or not submitted plans at all. The plaintiffs then sought, and received, further relief. The court issued an order on March 24, 1983, which found that each of the First Tier States:

---

[63] Hearings, Chambers testimony, July 18, 1985, written statement, pp. 12-13.
[64] Ibid.
[65] Ibid.

> . . . has defaulted in major respects on its plan commitments and on the desegregation requirements of the Criteria and Title VI. Each state has not achieved the principal objectives in its plan because of the state's failure to implement concrete and specific measures adequate to ensure that the promised desegregation goals would be achieved by the end of the five year desegregation period.[66]

OCR was ordered to require plans that would reasonably ensure that all goals of the 1978 plans were met by the fall of 1985, or commence enforcement proceedings no later than September 15, 1983. Separate relief was ordered for Virginia only. OCR was also ordered to obtain plans from Pennsylvania, Texas, and Kentucky which "fully conform to the Criteria and Title VI." [67]

The history of Title VI compliance in State systems of higher education demonstrates that OCR has been reluctant since 1970 to enforce the law against States which carry the vestiges of unconstitutional, dual systems of post-secondary education. The committee believes that the Assistant Secretary for Civil Rights' instructions to measure plan *implementation* rather than *achievement* is another example of continuing OCR reluctance to enforce Title VI.

Although the *Adams* court has forced OCR to act on its findings, the office does have some discretion regarding the methods of enforcing the law. An internal OCR memorandum states:

> In large part because of OCR's dominance in this area—coupled with the willingness of many courts to refrain from the imposition of involuntary remedies while a state was under a plan accepted by OCR—there is no extensive case law addressing the specific extent of a state's obligation to eliminate the vestiges of a previously *de jure* segregated system of higher education. In none of the many decisions issued over the years in the case now captioned *Adams* v. *Bell,* for example, does either the district or the circuit court specify what state of affairs must be brought about by a formerly *de jure* segregated system in order to be considered "desegregated" or "unitary." The *Adams* orders have simply directed OCR to take remedial action without undue delay with regard to states which OCR itself has already determined are out of compliance.[68]

However, OCR's discretion in the area of higher education desegregation plans is not unlimited. The same memorandum notes:

> Case law other than *Adams,* however, provides some limits on OCR in exercising its discretion to define the state of affairs that each state system must achieve in order to be considered either presently in compliance with Title VI or fully "desegregated." Lying behind both the language of agency discretion in *Adams* and the willingness of a number of courts to defer to agency efforts to

---

[66] *Adams* Order, March 24, 1983.

[67] Hearings, Chambers testimony, July 18, 1985, written statement, p. 15.

[68] "Fall 1985 Expiration of Current Plans of First Tier States," Frederick T. Cioffi, Acting Director for Policy and Enforcement Service, Office for Civil Rights, Department of Education, p. 3, November 15, 1984.

> achieve voluntary compliance is a line of cases—based on the decisions of the Supreme Court in the context of elementary and secondary school desegregation—that purport to stand for the principle that a formerly *de jure* segregated state has as great an obligation to eliminate the "racial character" of each of its state institutions of higher education as it has an obligation to eliminate the racial identifiability of each of its elementary and secondary schools.[69]

The March 24, 1983, *Adams* order regarding the First Tier States requires OCR to determine whether each of the States "achieved substantial progress toward the goals of its plan during the 1983–84 academic year."[70] Although the Assistant Secretary for Civil Rights has repudiated the notion of goals in desegregation plans, OCR attorneys will still measure, among other things, "the extent to which the state has made demonstrable progress toward achieving the state plan's 'part I' enhancement goals of comparability of physical plant, equipment, the range and quality of program offerings, and the number and quality of staff" and "the extent to which the state has made demonstrable progress toward achieving the state plan's numerical 'part II' goals relating to student enrollment."[71]

If OCR's internal evaluation of the desegregation plans reveals that the goals of the plans have not been met, but OCR disregards these findings, and allows the plans to lapse, it is likely that the courts will then be asked to review the appropriateness of using the *good faith standard* as the sole measurement of plan achievement.

OCR's final decision on the First Tier States, and the court's ruling on the legality of the decision, will signal a new era of policy on higher education desegregation. If both the Executive and Judicial branches of the Government find that the States have done enough to desegregate their systems of higher education, then they may allow vestiges of *de jure* segregation to continue to the future detriment of minority students. Even OCR recognizes that the vestiges of these systems have not been erased. In analyzing methods for measuring the achievements of desegregation plans, OCR stated in an internal memorandum that:

> Because the state systems with which it has been dealing have not heretofore even approximated what might be considered the elimination of the vestiges of dual systems, OCR has never defined how it would decide when that complete elimination of the vestiges has been achieved in a state system. In short, OCR has not defined the minimum requirements for a finding that the violations found in 1969–70 have been remedied.[72]

Based on past court decisions, it appears that the good faith standard does not adhere to the intent of Congress. In commenting on DOJ's reported decision to also use the good faith standard for

---

[69] Ibid., p. 5.
[70] Ibid., p. 11.
[71] Ibid.
[72] Ibid., p. 12.

determining whether school districts under Federal school desegregation orders are in compliance with constitutional and statutory requirements, the Congressional Research Service has stated:

> Based on a review of applicable Supreme Court precedent . . . at least since the 1968 ruling in *Green* v. *County School Board*, the watchword of the Court's jurisprudence has been "effectiveness," and the measure of any plan's success is the degree to which it produces actual desegregation. This appears to be echoed in those lower court decisions which, in their determination of a school district's unitary status, have uniformly required that in addition to "good faith efforts," the actions of school officials pursuant to a plan "must actually achieve a school system clear of every residue of past official discrimination." Accordingly, to the extent that the revised DOJ guidelines seem to substitute a "good faith" test for a standard which measures unitary status in terms of actual progress towards desegregation goals, as set by administrative or court decree, they may be at odds with judicial practice under prevailing constitutional law. However, sufficient ambiguity exists in the area that any firm conclusions may have to await further judicial action.[73]

D. OCR CANNOT ENSURE THAT MORE THAN 300 CASES SETTLED BY EARLY COMPLAINT RESOLUTION WERE RESOLVED ACCORDING TO FEDERAL LAW AND DOE'D REGULATIONS, AND WILL NOT JEOPARDIZE FUTURE LITIGATION INVOLVING VIOLATIONS OF CIVIL RIGHTS LAWS ENACTED BY CONGRESS

OCR relies on voluntary settlements in all cases where violations of law were found in response to complaints or compliance reviews. In any case where a complaint is received that does not involve a class issue, OCR attempts to have the complaint mediated prior to the start of an investigation. This process is called Early Complaint Resolution (ECR).

The committee believes that, under appropriate circumstances, ECR can be a valuable and effective tool in resolving discrimination. When used properly, ECR can save time and money, and can prevent the kind of undue hardship caused for all parties concerned in adversarial confrontations between a complainant and an alleged violator of U.S. civil rights laws.

However, OCR's current use of ECR may be illegal, may not protect the rights of complainants, and may jeopardize future litigation involving violations of civil rights laws. On November 13, 1981, DOJ apprised OCR of its:

> major concern . . . that the ECR guidelines do not require that the agreements reached between a complainant and recipient meet the legal standards set by Title VI, Title IX, Section 504 and your implementing regulations. The apparent willingness of OCR to accept any agreement which

---

[73] "Legal Analysis of Revised Department of Justice Guidelines on Termination of Federal School Desegregation Orders," Executive Summary, Congressional Research Service, September 10, 1985.

> results in a withdrawn complaint, regardless of the substance of that agreement, could lead to a weakening of your enforcement posture and our litigation position when dealing with a different recipient in a similar factual situation . . . we request that you closely monitor the operation of this process to determine if ECR is compromising your statutes or regulations.[74]

Concerns about the ECR process were also raised by OCR's internal QAS. On December 13, 1983, QAS informed Mr. Singleton that there were inconsistencies between OCR's public position that it will "continue to monitor both procedures (ECR and pre-LOF determination settlement) to ensure that complainants' rights are protected fully and that the settlements are consistent with regulatory requirements," and actual practice.[75] In reference to this public position, which was prepared for the 1984 OCR Annual Operating Plan, QAS warned Mr. Singleton that:

> Existing internal procedures do not support this statement. The description of the ECR process in the 1980 Investigation Procedures Manual states in pertinent part:
>
> "OCR does not take a position on the merits of the complaint during the early resolution process and, therefore, does not sign the resolution agreement. Its only role is to help the parties come to a mutually acceptable resolution." [76]

The director of QAS stated in a memorandum to Mr. Singleton that the public position that is not supported by internal practices,

> . . . should be OCR's policy and practice. (However, I distinguish between settlements which are inconsistent with applicable statutes and regulations on their face, and those which may be inconsistent, depending on facts that OCR does not have. OCR's responsibility should be to disapprove settlements involving clear inconsistencies but not to obtain factual information needed to determine whether the settlement is legally sufficient, as this would entail an investigation.) If you agree, I recommend that immediate action be taken to conform OCR's practices to the policy stated in the ACP [Annual Operating Plan]. This action should include modification of the IPM and ECR Manual. In addition, a memorandum from you to the regions clarifying this matter would be appropriate.[77]

Mr. Singleton testified that he did not recall the memorandum from the QAS. He also testified that he was unaware of the letter from DOJ, raising concerns about ECR, until it was requested by the subcommittee in June 1985.[78] According to Mr. Singleton, OCR

---

[74] Letter from Stewart B. Oneglia, chief, Coordination and Review Section, Civil Rights Division, Department of Justice, to Kristine M. Marcy, Director, Planning and Compliance Operations Service, Office for Civil Rights, Department of Education, November 13, 1981.

[75] "Early Complaint Resolution," Burton M. Taylor, director, Quality Assurance Staff, Office for Civil Rights, Department of Education, December 13, 1983.

[76] Ibid.

[77] Ibid.

[78] Hearings, Singleton testimony, July 18, 1985, transcript pp. 152-153.

established a task force to study ECR in April 1985, long after the concerns were raised by DOJ and QAS.[79]

According to OCR, 312 cases were settled by ECR since January 1981. However, Mr. Singleton testified that he was unable to assure the subcommittee that any or all of the ECR settlements were in accordance with statutory or regulatory requirements.[80]

E. OCR IS STUDYING METHODS TO SUBSTITUTE TECHNICAL ASSISTANCE FOR COMPLIANCE REVIEWS, A SWITCH THAT OCR'S OWN POLICY AND ENFORCEMENT SERVICE CONSIDERS ILLEGAL

OCR is required by law and DOEd regulations to conduct compliance reviews. The purpose of each type of investigation is to review the practices of Federal funding recipients to determine if they are in compliance with the four civil rights laws OCR enforces, and to correct violations when they are found, either through voluntary settlements or enforcement proceedings.

Compliance reviews are OCR-initiated investigations based on issues DOEd determines to be priority areas where illegal discrimination may exist. The reviews are distinct from technical assistance, which, simply put, is advice to recipients on how to conform to Federal civil rights laws. Technical assistance is not a method of enforcement.

Nevertheless, the Assistant Secretary for Civil Rights has asked his staff to study the possibility of eliminating compliance reviews, and substituting technical assistance instead. In an assignment to the OCR Operations Support Service (OSS) on March 18, 1985, Mr. Singleton wrote: "I am interested in assessing the feasibility of defining a 'balanced, proactive' technical assistance program, similar to the efforts underway with respect to the compliance review program. I am also interested in the feasibility of assessing the impact of technical assistance as compared to the impact of compliance reviews. I would like OSS to develop a workplan for the feasibility study." [81]

In handwritten notes at the bottom of the assignment, Mr. Singleton wrote, in reference to his request for a comparison between technical assistance and compliance reviews, "i.e. can TA [technical assistance] be used to eliminate the need for compliance reviews in certain circumstances? In all circumstances?" [82]

After learning of Mr. Singleton's request, the acting director of the OCR Policy and Enforcement Service warned OSS that the assignment is outside OCR's legal boundaries. In a memorandum, the acting director wrote:

> The Policy and Enforcement Service (PES) has reviewed carefully your proposed decision memorandum to the Assistant Secretary, with its new workplan and time schedule . . . The proposed memorandum presumes that the basic premise of the project is legally appropriate, a presumption which is not presently supportable . . . In the

---

[79] Ibid., p. 151.
[80] Ibid., p. 155.
[81] "Assignment to the Operations Support Service," Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, March 18, 1985.
[82] Ibid.

> past, OCR has always carefully distinguished between its statutory responsibilities for ensuring recipient compliance through complaint investigations, compliance reviews and monitoring activities and its TA activities, which attempt to bring about voluntary compliance but do not attempt to ensure that recipients are in compliance. As proposed, the project appears to eliminate this distinction between OCR's compliance responsibilities and its TA activities. Before the distinction can be eliminated, however, OCR needs to determine whether it has the legal authority to make this change and what the legal implications of such a change will be.[83]

The memorandum also noted that switching from compliance reviews to technical assistance would be similar to OCR's use of Early Complaint Resolution. "The legal concerns involved here are similar to those raised by the Assistant Secretary regarding Early Complaint Resolution. The Assistant Secretary recently established a task force to determine whether OCR has regulatory authority to provide ECR and what changes, if any, must be made to the ECR process in light of OCR's regulatory obligations. This determination was not made prior to the implementation of ECR." [84]

The committee believes that compliance reviews are an integral part of enforcement, and that any attempts to replace compliance reviews with technical assistance would be contrary to the law and DOEd regulations.

F. DESPITE INSUFFICIENT RESOURCES, OCR HAS NOT USED ALL FUNDS APPROPRIATED BY CONGRESS FOR THE ENFORCEMENT OF FEDERAL CIVIL RIGHTS LAWS

Based on the subcommittee's analysis of the OCR budget, and information supplied by the DOEd budget office, the committee finds that more than $20 million appropriated by Congress for civil rights enforcement between fiscal years 1980 and 1985 was returned to the Treasury or spent on activities unrelated to the OCR operation. Congress appropriated a total of $272.064 million for OCR during this period. Of that amount, $20.152 million, more than 7 percent, was not used as intended. Of the amount not used, $8.152 million [85] lapsed, and was returned to the Treasury; $7 million was used to pay mail penalty costs to the U.S. Postal Service for the entire DOEd; and $5 million was transferred to Howard University.

The subcommittee's analysis also shows that, during the same 1981–84 period the number of employees at OCR fell from 1,201 in 1980 to 907 in 1984.

OCR staff shortages remain a serious problem that has contributed to the office's failure to consistently meet the *Adams* deadlines. In the October 26, 1977, *Adams* order, the court specifically found that the Government had not done everything in its power to

---

[83] "Note to Frederick G. Tate, Re: Offering Technical Assistance to Recipients Selected for Compliance Reviews," Frederick T. Cioffi, Acting Director, Policy and Enforcement Service, Office for Civil Rights, Department of Education, July 9, 1985.

[84] Ibid.

[85] The DOEd budget office estimated that $1 million of this amount would lapse in 1985.

obtain additional staff, and that staff shortages contributed to OCR's failure to meet the order's time frames.[86] In 1981, an internal OCR study found that staff shortages were a main reason that OCR failed to meet the *Adams* deadlines.[87] During his testimony before the subcommittee, Mr. Singleton also recognized that staff shortages were a problem, and said he transferred his QAS staff because of personnel shortages at OCR.[88] Later in his testimony, however, the Assistant Secretary insisted that he has "more than enough staff. I have enough staff to do the job." [89]

The committee believes that OCR's refusal to use all funds appropriated for it by Congress has prevented OCR from pursuing more active enforcement. In fact, in most cases where enforcement was pursued by OCR, it was only after the *Adams* Court imposed enforcement deadlines for old cases. If OCR had sufficient resources, it not only could meet the *Adams* deadlines, it could bring more independent enforcement actions against recipients who violate the civil rights laws.

G. OCR HAS WEAKENED ITS CRITERIA FOR VERIFYING COMPLIANCE INFORMATION SUBMITTED BY RECIPIENTS OF FEDERAL EDUCATION FUNDS

Although complaint investigations and compliance reviews comprise the overwhelming majority of OCR's workload, the office also serves the valuable function of ensuring that certain grant recipients are in compliance with civil rights laws prior to the award of funds. Prior to 1981, OCR had the responsibility of approving the grant applications of recipients of funding under the Emergency School Aid Act (ESAA). ESAA money was provided mainly to urban areas for the purpose of funding desegregation activities. ESAA districts were required to be in compliance with all civil rights laws within OCR's jurisdiction prior to the award of funds. Because ESAA grants were so large—usually in the millions of dollars—school districts were careful to maintain compliance with the civil rights laws because most could not afford to lose the funds.

ESAA was merged into the Chapter 2 Block Grant by the Omnibus Reconciliation Act of 1981. As a result, the program was effectively ended because the Chapter 2 funds are too diffuse and small to pay for any type of effective desegregation plan or activity. The Magnet School Assistance Program, which provides ants for Magnet Schools, a component of many desegregation plans, is considered the successor to ESAA. Like ESAA, the program has a pregrant clearance process to determine applicants' compliance with civil rights laws. It is the only such clearance process available to OCR.

Under the program, OCR serves three functions:

---

[86] "A Narrative History of the *Adams* Litigation From October 19, 1970 to December 29, 1977," Office for Civil Rights, Department of Education.

[87] "Preliminary Report on the *Adams* Time Frames Project," Kristine Marcy, director, Planning and Compliance Operations Service, Office for Civil Rights, Department of Education, November 16, 1981.

[88] Hearings, Singleton testimony, September 11, 1985, transcript p. 70.

[89] Ibid., transcript p. 71

(1) Determining that a local education agency (LEA) is eligible for funds based on its desegregation plan, either court-ordered or voluntary.

(2) Determining that a LEA is likely to meet the nondiscrimination assurances provided in its application.

(3) Providing technical assistance to LEA's in developing desegregation plans.[90]

The key provisions of the Magnet School Program regulations provide OCR the authority to evaluate the applicants' nondiscrimination assurances in areas other than desegregation. Under the ESAA Program, OCR used a similar provision to monitor discrimination in school districts. However, although OCR has basically the same authority to gather information to assure that compliance has been achieved with all four civil rights laws under its jurisdiction, the office is not effectively using this authority. In his guidance to the regional offices on approving Magnet School Program applications, the Assistant Secretary for Civil Rights said that OCR has the authority to request information on compliance in areas other than desegregation, but noted that, "In general, the Assistant Secretary will not require further information from the LEA." [91] In other words, OCR will use information already submitted by the LEA or that which is already contained in OCR files. New information will not be requested.

The committee believes that OCR has the legal authority and responsibility to collect any information necessary to assure compliance with civil rights laws. The Magnet School Program provides OCR its only opportunity besides compliance reviews and complaint investigations to examine discrimination issues. By not seizing this opportunity to its fullest extent, OCR is abandoning a legitimate tool for encouraging voluntary compliance with civil rights laws.

IV. Recommendations

A. OCR should develop guidelines for the use of its two methods of enforcement

When voluntary efforts to correct violations of civil rights laws fail, OCR has two methods of enforcement at its disposal. It can refer the case to DOJ or initiate administrative enforcement proceedings. According to the Assistant Secretary for Civil Rights, OCR makes the determination about which method to use on a case-by-case basis. There are no guidelines regarding what types of cases should be referred to DOJ, and what type of cases should be pursued administratively. The haphazard OCR enforcement decisionmaking process has often resulted in cases involving clear violations of law languishing at DOJ for two years or more. In order to prevent a repeat of such occurrences, the committee recommends that OCR develop enforcement guidelines. Furthermore, the committee strongly recommends that the guidelines require OCR and DOJ to consult and determine in a fixed period of time which

[90] "Determining the Eligibility of Local Education Agencies for Magnet Schools Assistance," Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, June 6, 1985.
[91] Ibid.

cases should be referred to DOJ. Referring matters to DOJ that the Department does not consider worthy of enforcement is a pointless and inefficient exercise.

B. OCR SHOULD NOT RELY SOLELY ON THE GOOD FAITH STANDARD IN MEASURING THE SUCCESS OF DESEGREGATION PLANS

Good faith efforts to correct illegal discrimination which are unsuccessful do not satisfy the requirements of Title VI. The committee believes that if Title VI violations continue, and the vestiges of *de jure* segregation remain in an educational system, then the violations must be corrected, regardless of the good faith in which a given desegregation plan was implemented. Desegregation efforts should not be discontinued based on good faith, but should end only when OCR finds that violations of Title VI no longer exist.

C. OCR SHOULD DEVELOP GUIDELINES FOR THE RESOLUTION OF DISCRIMINATION COMPLAINTS BY EARLY COMPLAINT RESOLUTION AND PRE-LETTER OF FINDING NEGOTIATIONS

OCR does not ensure that settlements arrived at as a result of ECR and Pre-LOF negotiations have a legal basis and will not jeopardize future litigation. The committee recommends that OCR develop guidelines to be used to ensure that such settlements are in accord with civil rights laws and DOEd regulations.

D. OCR SHOULD DEVELOP GUIDELINES ENSURING THAT ALL SETTLEMENTS OF CASES WHERE VIOLATIONS OF LAW ARE FOUND ACTUALLY CORRECT THE VIOLATIONS

The committee found that settlements accepted by OCR do not always correct the original violation of law. For example, in one case, OCR concluded that reimbursement was required to the parents of a handicapped student who had to pay the costs of an appropriate education themselves, even though the law provides for a free, appropriate education for all eligible handicapped students.[92] Yet, OCR settled the case without obtaining reimbursement for the parents.

To prevent this situation from reoccurring, OCR should develop guidelines which require that violations of law be corrected before any settlements are accepted.

E. OCR SHOULD USE THE MAGNET SCHOOL ASSISTANCE PROGRAM MORE EFFECTIVELY AS A MEANS TO MONITOR SCHOOL SYSTEMS' COMPLIANCE WITH FEDERAL CIVIL RIGHTS LAWS

OCR is stressing the plan eligibility, not overall compliance eligibility, in processing the applications of recipients seeking Magnet School grants. The committee does not believe OCR is maximizing the use of its authority to also require sufficient information from applicants regarding compliance with laws and regulations other than those pertaining to specific desegregation plans. The Magnet School Program should be used to determine overall compliance by examining current information in determining the eligibility of applicants.

---

[92] In the matter of DeKalb County School System, Enforcement Activities Report, February 28, 1984.

SEPARATE VIEWS OF HON. ROBERT S. WALKER, HON. THOMAS N. KINDNESS, HON. ALFRED A. (AL) McCANDLESS, HON. LARRY E. CRAIG, HON. HOWARD C. NIELSON, HON. PATRICK L. SWINDALL, HON. THOMAS D. (TOM) DeLAY, HON. RICHARD K. ARMEY, HON. JIM LIGHTFOOT, HON. BEAU BOULTER, AND HON. JOHN E. GROTBERG

The Department of Education's Office for Civil Rights (OCR) has a tremendous responsibility, to be sure. The importance of enforcing statutes that prohibit discrimination on the basis of race, color, national origin, sex, handicap, and age in all programs and activities that receive funds from the Department cannot be overstated. And OCR's obligation to enforce those statutes must not be denigrated.

To the extent that the Committee's investigation and oversight hearings can assist OCR in the pursuit of its mission in the future, we can be supportive. However, in the case of this report, the Committee has gone to great lengths to paint a very bleak picture of enforcement activity at OCR. Inasmuch as the report fails to adequately address several fundamental facts which we believe are key to any final judgment about the effectiveness of the Office, we must separate ourselves from the conclusions and recommendations.

First of all, there is no mention of the fact that OCR is statutorily required to seek voluntary compliance with civil rights laws before initiating enforcement action against recipients where deficiencies may have been found. The authors of the report imply that OCR has been negligent in its performance by attempting to obtain compliance voluntarily. Not only do we recognize the statutory obligation of OCR to pursue voluntary settlements, we believe that such settlements are in the best interests of all parties involved in a majority of cases.

Also noticeably absent from the report is any mention of the improved performance record OCR has achieved in recent years. For example, the average age of pending complaints at the end of Fiscal Year 1982 was 1,297 days; at the end of FY 1984 it was only 229 days. Similarly, the average age of pending compliance reviews was reduced from 1,036 days at the end of FY 1982 to 271 days at the end of FY 1984. Considering the sizable caseload carried by OCR (approximately 2,000 complaints and over 200 compliance reviews received or initiated each year), this record of improved performance should not be overlooked. Nor should its achievement be belittled in view of the vast number of overlapping provisions of law regulating equal opportunity practices which are being implemented by more than 25 federal departments and agencies; these statutes result in duplication of effort and inconsistent enforcement in many instances. Compound this situation further with new and far-reaching Supreme Court decisions such as *Grove City,* and is it

any wonder that complaint resolution and compliance reviews are extremely complicated and time-consuming processes?

To those who would point to the *Adams* Order timeframes to explain the performance improvement, we would respond that, in our opinion, improved performance achieved while subject to the requirements of the *Adams* Order is all the more remarkable. Instead of encouraging OCR to pursue its goal of eliminating discrimination, the *Adams* Order has imposed on the Office incredible reporting requirements which consume the majority of its time and resources. OCR is required to generate mountains of paperwork on its success or failure to meet complaint-process deadlines to respond to the demands of the *Adams* plaintiffs. Wouldn't a better use of finite resources be the pursuit of legitimate complaints of discrimination and compliance reviews?

We are also greatly disturbed by the authors' contention that OCR's increased reliance on good faith efforts to measure the success of higher education desegregation plans is inappropriate. Implicit in the criticism is the apparent belief that the achievement of numerical goals within specified time periods is the only legitimate means by which to attain the goal of desegregation. We reject that notion. Quota-based systems are inherently discriminatory. The entire legislative history of the Civil Rights Act of 1964 makes very clear that the use of quotas is anathema to the elimination of discrimination. An analysis of efforts to comply with the civil rights laws of the nation which emphasizes what a particular institution is actually doing to solve its problems is much more in keeping with the intent of the Civil Rights Act than is one which simply reviews numbers. The use of quota-based policies is not only inappropriate, but also wrong.

Perhaps the most important factor contributing to the greatness of our Nation is the fact that each individual is given the opportunity to be the best that he or she can be. Education is a key element to individual attainment of this goal and, certainly, OCR plays an important role in assuring that the opportunity is afforded to every individual. We hope that the Committee's oversight hearings on OCR may prove beneficial to the management of OCR in the long run. By the same token, however, we trust that those who review this report will bear in mind the full context within which OCR operates. OCR is not without flaws, but neither is it without justification for the process of assuring non-discrimination which it has followed during the tenture of this Administration.

ROBERT S. WALKER.
THOMAS N. KINDNESS.
AL MCCANDLESS.
LARRY E. CRAIG.
HOWARD C. NIELSON.
PAT SWINDALL.
TOM DELAY.
DICK ARMEY.
JIM LIGHTFOOT.
BEAU BOULTER.
JOHN E. GROTBERG.

Senator SIMON. A report, a very hefty report, by the Citizens Commission on Civil Rights includes the following statements. I shall not read their full report here—which you will appreciate, I am sure. Let me just read two sentences.

While problems with civil rights enforcement remained as of 1980, both the Offices of Civil Rights and the Civil Rights Division appeared committed to effective action with respect to civil rights enforcement in elementary and secondary education. Since 1981, Federal civil rights enforcement in elementary and secondary education has deteriorated dramatically.

I don't know of anyone who hasn't come to that conclusion of those who have taken a look at this the record of the Office for Civil Rights. The question is: Is this office, under your direction, really going to provide leadership? That is really the fundamental question.

What I intend to do, assuming that you are approved by the Senate, is to hold another hearing in 6 to 8 months and we will take a look. And if there is not an appreciable improvement over the record of the past, frankly, then, I probably will be offering an amendment just to get rid of your office. I don't see any point in having it. But if we can get leadership—tough, effective leadership—then obviously we want that office continued.

If I may first just throw a softball question at you, are you going to give tough, effective leadership?

Mr. WILLIAMS. Senator, I think I have the responsibility to do so, and I intend to do so..

Senator SIMON. Good. I will have some questions I am not going to get around to asking today. I will submit them in writing. If you can answer in writing as quickly as possible, then we can proceed with consideration of your nomination..

As I go through the list of organizations to which you belong, I don't, for example, find the NAACP or the Urban League or organizations that have been championing, the causes that your office really ought to be championing. The one exception is the National Organization of Black Law Enforcement Executives. Is that just omitted from the record, or have you not belonged to these organizations?

Mr. WILLIAMS. No, Senator, there is no omission. From the time that I moved back to Midland after graduating from law school in 1978 to approximately 1983, there was not an NAACP chapter in Midland, nor was there an Urban League chapter in Midland. So there was not an opportunity to join those organizations. I have not had any opposition to membership. There just simply was not an opportunity to be a member of a local chapter in the community in which I lived.

Senator SIMON. Certainly, there were chapters in Los Angeles, CA where you wnt to school.

Mr. WILLIAMS. There were most definitely, Senator. I was not a student member of the NAACP chapter. I involved myself in some alternative kinds of things. I was one of three founders of the Associated Black Students of Southern California, and I was the president of the Black Law Students Association at Southern California. So I was not a member of any of the traditional civil rights organi-

zations, but I was, indeed, involved in organizations that were involved in activism for African Americans.

Senator SIMON. And tell me about the law school student group that you headed. What did it do? What I am groping for is this: I want someone who is going to show the muscle and the backbone to really stand up and do a job.

Mr. WILLIAMS. If I could, the Law Student Association was one that was designed to assist in fostering the educational opportunities of black law students at Southern Cal. We assisted in terms of tutorial programs. We assisted students in trying to provide an environment that was not only one where they could learn but one where they could find a friendly face. We engaged ourselves in helping students find employment, summer employment opportunities in and about the city of Los Angeles. Those were just some of the things that we did.

The question, however, I will sort of play with the tag of the question. The question sort of goes to the fire burning in the belly, it does and I think it has. If I could, just upon returning to Midland in 1978, I found myself involved in the issue of whether the city should accept Community Development Block Grant funds for the benefit of low-income citizens. The city at that time had not done so. After discussing that issue with a number of people in the black and low-income community, I became involved in that issue and later became involved in the issue of providing Federal mortgage bonds to the community, and some of those mortgage bonds through, I would like to say, a lot of the initiative of my own, were directed toward loans for the rehabilitation of housing.

So I think in the early part of my career, when I was a tad bit younger than I am now, I have shown that the fire has burned in the belly.

Senator SIMON. If you could just describe generally what your goals are for your office, what would they be?

Mr. WILLIAMS. I think the first one is one, Senator, that I mentioned in the statement. I think first and foremost OCR is a law enforcement agency. Whenever the time is that my tenure were to expire, I would hope that on the tombstone somewhere it would say that OCR did, in fact, perform as a law enforcement agency.

Aside from that, I would want that office to mend the wounds that it now has with the entire range of advocacy groups. And those would be advocacy groups on the left as well as the right.

As we go to substantive issues, I think first there is sort of a series of substantive issues, goals, that I would have. The first would be, as I mentioned in the statement, one of the goals of the Secretary is to increase the graduation rate of all of its students, up to 90 percent by the year 2000. I think OCR has a role to play in that, and we can play that role in ensuring that such things as ability grouping, which is a well-recognized educational strategy, is not used in a fashion that discriminates against minority students and thereby causes those students not to be able to attain graduation.

Other things such as disparate discipline, those kinds of things, that while we need strong and effective discipline in America's schools, we do not want that discipline to be harsher toward minority students than it is to other students and thereby cause those

students to drop out or, as some people say, to push them out of education.

Another goal would be as it relates to the President and the Secretary's goal, as it relates to increasing the math and science proficiency of American students. I have been advised in looking at the literature and in talking with people that minority students as well as women are under-represented in many of those classes. It is extremely important, I think—and I think many others would agree—that as we move toward a future that will challenge us, particularly as it relates to high technology, that we ensure that minorities and women have the high technology capabilities that that future will require.

A third principal goal would relate to something that is in my background; that is, it would relate to the racial harassment and violence that is occurring on some of our Nation's college campuses. As I mentioned in the statement, I think I bring a unique background to that area, having prosecuted criminal civil rights violations.

Senator SIMON. You will be facing a lot of very specific problems. We just held a hearing yesterday on the problem of homelessness, particularly as it affects children. We have about 60 percent of the States that apparently—I have to add "apparently"—are not following through in terms of seeing that within their States the schools do not require permanent residence before they admit children. We think the law is clear. If it needs to be clarified, we ought to know that. But we need someone to get the word out.

Is this the kind of thing that you are going to be out championing?

Mr. WILLIAMS. Senator, I am aware of problems as it relates to students that are homeless, even as it relates to students that come from families that are migrant workers, and how that situation or that status can adversely impact upon their opportunity to be admitted into schools. That would be one of those kinds of issues that that office under my leadership would be involved in.

I must suggest to you or indicate to you, Senator, that in talking with members of the staff, they have been looking at that issue as well.

Senator SIMON. Good. You will have the same staff that was there 2 years ago, 3 years ago, 5 years ago; is that correct?

Mr. WILLIAMS. That is correct.

Senator SIMON. OK. That staff needs someone to lead. The staff has not performed well. In fairness, it may very well be that you have a competent staff. There has not been anyone to lead the charge. That is what I hope you will do.

We face a problem—I hope it is a diminishing problem, but I am not sure—of Asian students being discriminated against in the field of higher education. It is a somewhat different problem than minority students face otherwise. Are you aware of the problem? Do you have any reflections on that?

Mr. WILLIAMS. Senator, I am aware of the problem, and I am aware that OCR is currently conducting compliance reviews at three universities in the country at this present time.

Senator SIMON. And you are going to pursue this?

Mr. WILLIAMS. Senator, if confirmed, one of the first things that I would wish to do would be to bring to close two—there are two of those compliance reviews that I have been advised can be completed in very, very short order. One of the first things would be to bring those two to fruition in extremely short order. And if we need to expedite it, do things to expedite those compliance reviews, then we will do so.

Senator SIMON. And you intend to monitor this kind of thing? Not simply bring to close what is pending, but to monitor current practices?

Mr. WILLIAMS. We will look at those kinds of problems as they appear to pop up around the country and, of course, monitor those kinds of problems.

Senator SIMON. How do you plan to coordinate your activities with those of the Civil Rights Commission, and the Civil Rights Division in the Department of Justice?

Mr. WILLIAMS. I have had the occasion thus far to speak with Assistant Attorney General John Dunn just generally about the operation of the Department of Justice and about OCR. I anticipate and intend that we will periodically meet and talk about issues that are germane to both DOJ and OCR, as well as have the same kind of relationship with members of the Federal civil rights community in and about the Government, whether they be the U.S. Commission on Civil Rights or the Chairman of the EEOC, or whether they be the civil rights offices at HHS and Department of Labor.

Senator SIMON. In that connection, you indicated earlier you want to be open to the NAACP, the Urban League, to other groups. Do you plan some kind of periodic meeting—and I am not suggesting that every week you have to meet with them—where, say once every 6 weeks or so, you can have an exchange and they can tell you candidly what they think is missing.

Mr. WILLIAMS. Yes, Senator. The way I look at it is that one of the things that we have found that has worked very well at the Department of Treasury, is that we meet on a fairly regular basis—it comes out to about once every 2 or 3 months—with associations that deal in the Federal law enforcement community, whether it is the IACP or NOBLE or other organizations. I would like to bring the same kind of approach to OCR, and I intend to do so. I anticipate that there will be regular opportunities for us to meet and greet, and there will obviously be opportunities when there will be issues that I would want counsel on.

Senator SIMON. I won't ask you to be more precise right now, but, if you could, send a letter to me within the next 48 hours. Please indicate a little more precisely—once every 2 months, whatever it is—what your schedule might be. Then when we hold another hearing 8 months from now, I can say to you, Mr. Williams, here is what you promised, what is the performance. All right?

Mr. WILLIAMS. Be glad to.

[The information of Mr. Williams follows:]

May 25, 1990.

Honorable PAUL SIMON,
United States Senate,
Washington, D.C.

Dear SENATOR SIMON: This letter is in response to your request at my confirmation hearing to be the Assistant Secretary of Education for Civil Rights regarding how I intend to fulfill my sincere commitment, if confirmed, to maintain an "open door" policy with the civil rights advocacy groups and seek "the advise and counsel of those groups on the operations and policies of OCR."

I believe that informal arrangement which allows for meetings to be scheduled, as necessary, is in the best interest of America's parents and students. That would provide the flexibility to deal with issues as they arise and inure to the development of the kind of mutual respect and cooperation that both OCR and the advocacy groups desire.

I will, during the first four months of my tenure, invite representaties of the advocacy groups to discuss with me issues pertaining to the statutes that OCR enforces. I will also invite representatives of national and professional education associations to meet with me within the first six months. Thereafter, OCR will meet, at least twice a year, with groups interested in continuing our dialogue.

I hope that the above satisfactorily addresses your concerns.

Sincerely,

MICHAEL L. WILLIAMS

Senator SIMON. We face a problem with students that are called "LEP students," students with limited English proficiency who also face some special problems. Are you aware of the problems in this area? And if so, any reflections here?

Mr. WILLIAMS. I have some awareness, Senator. At this point, one of the ways that I see that OCR can be involved with students that have limited language proficiency—and those students would range from students that speak as their principal language Chinese or Spanish or any number of languages—would be in terms of our complaint investigation activity, but also in terms of the compliance review activity. OCR has currently designed a compliance review schedule that anticipates doing compliance reviews as it relates to students that have limited language proficiency. And so I anticipate that there is a real opportunity for us to take a very active and aggressive role in ensuring that students who do not have the ability to speak the English language and thereby might be disadvantaged in their educational setting, there will be an active and an aggressive way for us to participate in ensuring that they can receive the education that they deserve.

Senator SIMON. You mention enforcing the law. I think there are other ways also where you can encourage better results. If, for example, schools are doing an outstanding job in, say, serving these students, a letter from you to people commending them for doing a good job may be useful. There is both the carrot and the stick approach, and I hope you would use both. I think people ought to be commended when they are moving in the right direction.

In 1982, the U.S. Supreme Court ruled that the failure of the State of Texas to provide tuition-free public education to children of undocumented workers would create an uneducated under-class of people. Since that decision, apparently a number of school districts have excluded undocumented children by requiring that they bring Social Security numbers as a condition for enrollment. Because undocumented workers aren't going to be able to bring those

Social Security numbers, in fact, we have excluded a lot of people from school who desperately need that education.

Are you at all familiar with that ruling and the situation that exists here? Any comment on that?

Mr. WILLIAMS. I am not familiar with the ruling, Senator.

Senator SIMON. It is an important area, if you could make sure that you will take a look at, because again it is not huge numbers here but they are people who need help.

Mr. WILLIAMS. I will do so.

Senator SIMON. You mentioned the need to upgrade skills. You talked about a 90 percent high school graduation rate. What is happening in the field of higher education is that particularly male African Americans are not enrolling. The enrollment picture is not a good one, as I am sure you are aware. Any reflections in that area?

Mr. WILLIAMS. One would go back to what is happening, obviously, in the elementary and secondary level. I think there are sort of three keys to what happens to students in ensuring that they learn, and one is that we have to have real high expectations of students. We have to have it of the students; we have to have it of their parents; and we have to have it of their community and their school system. The second is that we have to hold folks accountable, and that would be the students themselves. That would be, again, parents as well as the administrators. The third would be that we provide access to students so they can get the best education.

I think the key to it would be ensuring that all three of those elements are applied at the very, very early ages of each student's education. As we move toward college, we have to increasingly, as part of the educational setting but also as part of the community setting, keep reminding students, and particularly African American males, about the need and the value of a higher education, and discourage them from looking at alternatives to obtaining an education.

As we move even further, I think colleges and universities can do a much better job of attracting, recruiting, and encouraging students, all students, particularly all minority students, of attending their particular universities. But I have to admit that the key to me is that we go back to where those students first started, and that is at the elementary and secondary level.

Senator SIMON. I am asking a question I should know the answer to. I should have asked my staff before the hearing. We have the civil rights surveys, and I will be asking you a question on that in a moment. Are you required to make an annual report, a public report, to either the Secretary or to Congress?

Mr. WILLIAMS. OCR is required to report semiannually to the Congress.

Senator SIMON. Biennially? Annually or biennially?

Mr. WILLIAMS. Biennially.

Senator SIMON. OK. Even though the law may require—a formal report, I would like to receive, in addition to the hearing that we will be having, a report from you about a year from now. This is May 23rd. By May 23, 1991, if I am still in the U.S. Senate at that point, I would like to have a report from you. It can just be a para-

graph or two of what your office is doing on some of these problems that we have talked about: African American black male enrollment, what you are doing in terms of people with disabilities, what you are doing on the problems of Asian American discrimination, what you are doing for those with limited English proficiency and so forth. OK?

Mr. WILLIAMS. We have a deal.

Senator SIMON. Right now, you are required to conduct what are called 101, 102 surveys. They are the only source we have for civil rights related data from our schools. And yet we do not have the fall 1988 survey yet. The survey has been made; it has not been published.

Are you familiar with the survey requirements? And if you are, do you have any idea why the results of the fall of 1988 surveyhave not been made available?

Mr. WILLIAMS. Senator, I have some familiarity with the 101's and 102's in terms of what the questions are that school districts are asked. As far as why the survey has not been published to date, it is at least my understanding that there are budgetary reasons why you have not seen that survey.

Senator SIMON. Well, if there are budgetary reasons, I would like to know. If we need to take a few dollars from something else and make sure these are published, I think it is important. There are apparently also some who would just as soon not do those surveys. I think it is extremely important that they continue. Could you look into this and report back to the committee? I am not saying that you have to do that before we move ahead with confirmation.

As you look at your budget and your staff, any observations? First of all, I think this is the first time you will have had an executive position like this. Is that correct?

Mr. WILLIAMS. That is correct.

Senator SIMON. Do you feel comfortable about that?

Mr. WILLIAMS. Yes. Yes, I do. The last year as a Deputy Assistant Secretary of Treasury, I think I have had the opportunity to see a number, at least a range of the issues that will come before me at OCR, whether they are budgetary matters. We have five law enforcement bureaus or four law enforcement bureaus at the Department of Treasury. We have a budget of about $1.74 billion. So I have seen that kind of money and the kind of issues, at least in part, that would come before OCR, as well as the kinds of allocation of resource questions that would come before OCR. So I feel quite confident going into this position that I sort of have what it would take to deal with those kinds of issues.

Senator SIMON. As I look at the number of staff peopleat OCR: in 1981, those were 1,099; in 1989, 789—a drop of 300 or almost 30 percent in the numbers of personnel. Now, if you can do a good job with 789 or you can do a good job with 500, I am all for it. I am also on the Budget Committee, so I have appreciation for that. But I want to make sure the job gets done. I hope you will feel free—in fact, I want to put it a little stronger than that. At that 6- or 8-month review, whenever we have it, one of the questions I would like to pose to you is: Is your staff adequate to get the job done that needs to be done?

It is a huge task that you are undertaking, and that staff should be galvanized. And if as a residue of the Reagan years, frankly, it is the wrong kind of a staff in that office, we ought to know that. And you ought to know it very quickly. I want a staff that is not dragging its feet on doing the job. I am not saying that they should be removed from Government, but let's transfer them over to the Defense Department or some place else, instead of the Office of Civil Rights.

I have other questions here, but in general I think you know where I come from. I am not hostile to you personally. I am hostile to inaction in your office. And you will get more attention from this Senator than most people in most offices.

My staff has just handed me a note. Senator Thurmond is on the floor managing the crime bill. He has asked that his statement be entered in the record.

[The prepared statement of Senator Thurmond follows:]

PREPARED STATEMENT OF SENATOR THURMOND

Senator THURMOND. Mr. Chairman, I would like to welcome Mr. Michael Williams to this hearing. President bush has nominated tjhis gentleman to be the Assistant Secretary for Civil Rights at the Department of Education. I have met with Mr. Williams and have found him to be well qualified for this important position. He is a man of character. I am convinced that, if confimed, Mr. Williams will execute the duties of his office with impartiality and dedication.

Mr. Chairman, Michael Williams is a fine nominee. I look forward to his nomination being acted upon expeditiously by this committee.

Senator SIMON. Senator Hatch is involved in the same, and he also asked that his statement be entered into the record.

[The prepared statement of Senator Hatch follows:]

PREPARED STATEMENT OF SENATOR HATCH

Senator HATCH. This hearing today will reveal the outstanding record that Michael Williams has established in his profession which makes him an ideal candidate for this position as Assistant Secretary of Education for Civil Rights. He has accomplished a great deal, and i expect this will not be the only time that this man will appear before us to be appointed to a high position in this government.

Mr. Williams has a very impressive resume. He has served in a variety of roles and has had broad experience working in civil rights. He has worked in the public sector at both the Federal and local levels as well as for advocacy groups. During his years at the Justice Department, he has received several special awards for outstanding performance. Such exemplary performance cannot be rendered without a commitment to the mission. His success, therefore, must be due to his personal dedication and integrity, as much as it is due to his superior skills as an attorney.

I am concerned about the needs of minorities and women in the public schools. In the next few years, there will be an increasing number and proportion of minorities in the schools. Women and

minorities will make up most of the new entrants into the workforce in the future. We cannot afford to waste the talent available in this group of people. This will be an exciting challenge for us as a country.

It is important that we have a head of the Office of Civil Rights who can and will take a proactive role in encouraging teachers and educational leaders to work with minority groups and women to help them achieve their full potential. I am convinced, Mr. Chairman, that Michael Williams is the man for the job.

Senator SIMON. They or other membes of the committee may have questions they want to submit in writing. We thank you very, very much for your testimony and wish you the best. I look forward to working with you and hearing from you in the future.

Mr. WILLIAMS. Thank you, Senator.

Senator SIMON. Thank you very much.

Our next witnesses are a panel: Phyllis McClure, the director of the Division of Policy and Information, the NAACP Legal Defense and Education Fund; Ellen J. Vargyas, an attorney with the National Women's Law Center; and Paul Igasaki, Washington, DC, representative of the Japanese American Citizens League. Very happy to have all three of you here.

Ms. Vargyas, let me say in advance, I was asking questions about minorities and I didn't ask questions about the majority, and I should have when questioning the nominee. But we are very pleased to have all three of you here.

Ms. McClure, we will start with you.

STATEMENTS OF PHYLLIS McCLURE, DIRECTOR, DIVISION OF POLICY AND INFORMATION, NAACP LEGAL DEFENSE AND EDUCATION FUND, WASHINGTON, DC; PAUL M. IGASAKI, WASHINGTON, DC, REPRESENTATIVE, JAPANESE AMERICAN CITIZENS LEAGUE, WASHINGTON, DC; AND ELLEN J. VARGYAS, ATTORNEY, NATIONAL WOMEN'S LAW CENTER, WASHINGTON, DC

Ms. MCCLURE. Thank you, Senator Simon. I want to thank you personally and all members of the committee for holding this confirmation hearing for Michael Williams to be Assistant Secretary for Civil Rights in the Department of Education.

The Legal Defense Fund has been a vociferous critic of OCR for years. I must say that I am heartened by the President's nomination of someone who has a law enforcement background, and I was further heartened by hearing his prepared testimony and the way he answered questions.

The Legal Defense Fund wants to approach OCR and the new Assistant Secretary in the most constructive and positive way. That doesn't necessarily mean that we won't be critics any more. Sometimes outside critics can be very helpful to an agency. But we do intend to approach OCR and Mr. Williams in a constructive way to help him get the job done.

I outline in my written remarks the five things that I think the next Assistant Secretary should focus on to get this agency straightened out. One is the whole issue of compliance standards and policies with laws, regulations, and prevailing judicial precedents. I mention further on a particularly critical area that OCR

needs to develop is some policies with respect to all these civil rights statutes in the area of testing.

As you are no doubt familiar, the EEOC has had for some time standards on testing in the employment context. Those standards are used by employers. They are looked to by the courts. There is no equivalent thing like that for testing in the education context. It simply hasn't been developed. The professional agencies—that is, the private, nonprofit, nongovernmental professional organizations—have developed standards, but they have no law enforcement teeth in them.

This morning, the National Commission on Testing and Public Policy issued its long-awaited report on this subject about testing in employment and education, and I believe that this Commission can be of significant help to OCR in beginning to develop policies in this area.

Second, I think this major issue for training investigators and lawyers, this may be a budgetary problem. Given the workload that OCR has, I doubt whether they have sufficient resources to do the real job of training that needs to be done. I try to suggest some other places that OCR might go, Office of Personnel Management, certainly the Department of Justice civil rights lawyers who do very similar kinds of compliance work.

Three, I address the whole question that they have got to streamline the approval process for issuing letters of findings—that is, that find recipients in violation. I go into this in some detail in my testimony, and I won't take that up here unless you have specific questions.

It is clear to me that Mr. Williams, should he be confirmed—and I fully anticipate that he will—he has got to get control of this agency for himself. That is not to say that, of course, the statutory responsibilities for enforcing the law, the statutory responsibility for executing the ultimate sanction of fund termination rests with Secretary Cavazos. It is the Assistant Secretary who has that responsibility, should have that responsibility for issuing letters of findings, issuing notices of opportunity for hearing. And I think if the Assistant Secretary could gain control of that process without having to circulate it through this encumbered process outside, with department officials outside OCR, it could execute and speed up the process a great deal.

Fourth, I talk in my written testimony about initiating prompt enforcement and fund termination proceedings. This is not just a question of meeting time frames. The law doesn't have any clout; it doesn't have any meaning. No one believes it. I mean, if you run through a red light 50 times and nobody stops you and nobody gives you a ticket, you begin to think you can get away with it. It is true in the history of OCR that when it has used tough enforcement and it has used the sanctions that the statute provides, actual law enforcement has a very therapeutic effect in bringing agencies and school districts into compliance. Because the last thing school districts and institutions of higher learning want to lose is a dime of Federal money.

Finally, the role of the Office for Civil Rights in advising not only the recipients but the public on major issues that have a civil rights dimension that affect American education, and I have heard

you and Mr. Williams have some dialogue already about some of those major issues.

If Mr. Williams is to be confirmed, we wish him well, and I thank you for your promise of some oversight and some reports to see whether, in fact, not only is Mr. Williams performing, but when he needs your help and the committee's help, that you stand ready to give it. Thank you.

[The prepared statement of Ms. McClure follows:]

PREPARED STATEMENT OF PHYLLIS MCCLURE

I am Phyllis McClure, Director of the Division of Policy and Information of the NAACP Legal Defense and Educational Fund, Inc. On behalf of the Legal Defense Fund, I wish to thank this Committee for holding this hearing on the confirmation of Michael Lawrence Williams to be the Assistant Secretary for Civil Rights at the U.S. Department of Education.

The Assistant Secretary for Civil Rights directs the Department of Education's Office for Civil Rights (OCR) which was established to enforce Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975 with respect to recipients of funds awarded by the Department. Those laws prohibiting discrimination on the basis of race, color, national origin, sex, disability and age cover all of the public pre-collegiate and postsecondary system and a substantial number of private schools in the United States.

In addition to its general jurisdiction, OCR also has specific responsibility for pre-clearing applicants for grants under the Magnet Schools Assistance Program (MSAP). OCR must determine that the applicants have an eligible desegregation plan; and that they are not discriminating in faculty hiring and assignment, in the assignment of students to or within schools, or in the operation of extracurricular activities on the basis of race, color, national

origin, religion, sex and disability prior to the award of the grant.

The fact that Mr. Williams has a background as a prosecutor and law enforcement official bodes well for the agency. He will be able to convey to the staff that OCR is the law enforcement arm of the Department. When violations are found, a recipient must have the opportunity, but not a protracted opportunity, to comply voluntarily. With his experience, Mr. Williams will, I am sure, appreciate the fact that nothing makes a mockery of the law faster than the failure to enforce it. Nothing induces compliance faster than the threat of losing federal funds.

To give the Committee an appreciation of the magnitude of the job facing Mr. Williams, I must inform you that in the past decade OCR has functioned in a manner to avoid finding recipients in violation of the laws under its jurisdiction, especially with regard to Title VI. In fact, instead of being a leader in promoting equal opportunity, OCR has actually blessed or been silent about policies and practices that are harmful to minority students and faculty. It is ironic that in a decade of national attention on enhancing the academic performance of America's students, reducing the dropout rate and setting higher standards, OCR has not contributed to improving educational opportunities by using the civil rights laws to eliminate barriers faced by Hispanic and black students.

The Office for Civil Rights has virtually abdicated its responsibility to enforce Title VI. In fiscal year 1989 only 15%

of complaint investigations involved Title VI.[1] That is approximately the same pattern which existed during fiscal years 1983 through 1988. In that period, 15% of all complaints investigated involved issues of race and national origin.[2]

OCR argues that it has no control over the kinds of complaints it receives.[3] However, OCR does control the type of compliance reviews conducted. Instead of concentrating more agency-initiated reviews in areas where few complaints are filed, the profile of compliance reviews looks just like the complaint profile. In fiscal years 1983 through 1989 only 15% of compliance reviews were devoted to race and national origin issues.[4]

Another indication of non-enforcement is that even when it does conduct Title VI compliance reviews, they have the highest percentage of no-violation findings. Compliance reviews are agency initiated, presumably targeting school systems and higher education

---

[1] Office for Civil Rights, Ninth Annual Report to Congress FY 1989, pp. 16,23.

[2] These percentages might be somewhat higher if Title VI issues in multiple-basis investigations were included. Committee on Education and Labor, House of Representatives, Investigation of the Civil Rights Enforcement Activities of the Office for Civil Rights, U.S. Department of Education, Appendix A, Table 4-E p.89. (December 1988). Hereinafter cited as House Report.

[3] Office for Civil Rights, Response to the Committee on Education and Labor Staff Report, p.5 (January 1990). OCR also argues that many minority children are protected by Section 504 complaint investigations and compliance reviews. That begs the issue. Certainly minority children may be victims of discrimination based on their handicap as well as their race. The point is that OCR has devoted far fewer resources to identifying and remedying race-based allegations of discrimination.

[4] Ibid, Appendix A, Table 3-A, p.80.

institutions because of information suggesting possible non-compliance. Yet between Fiscal Years 1983 and 1988, 44.9% of race and 46% of national origin compliance reviews were closed with a finding of no violation compared to 23.4% for Title IX reviews and 18.3% for Section 504 reviews.[5] The same is true with respect to complaint investigations during that same period, there was an even higher incidence of closing complaints with a finding of no-violation. Of complaints alleging discrimination on the basis of race or national origin, 84.9% and 74.8% respectively were closed with a no-violation finding.[6]

Mr. Williams faces a major task of restoring credibility to OCR. I believe that he can accomplish that task by concentrating attention in five areas:

(1) developing and publishing compliance standards and policies which comport with the laws, regulations and prevailing judicial precedents;

(2) training investigators and lawyers on enforcing those standards and policies so as to obtain maximum use of resources;

(3) streamlining the process for approval of issuing Letters of Findings of non-compliance;

(4) initiating prompt enforcement and fund termination where voluntary compliance cannot be secured;

---

[5] House Report, Table 3-B, p.81.

[6] Ibid, Appendix A, Table 6-B, p. 97. The percentage of no violation findings for complaints closed during FY 83-89 were: age-87.2%; race 84.9%; other 76.7%; national origin 74.8%; multiple bases 70.4%; handicap 49.5%, sex 48.2%.

(5) taking the initiative to advise recipients and the public of the civil rights implications of new and emerging issues which confront American education.

Permit me to address each one of these, using examples of how credible civil rights enforcement can bring about trust that the laws are faithfully executed and that minority children are guaranteed nondiscrimination by state and local school authorities.

COMPLIANCE STANDARDS AND POLICIES

Any law enforcement agency must be able to articulate what the laws mean in a particular context and how they are going to be enforced. OCR must develop clear investigatory standards and agency policy with respect to racially discriminatory practices which deny black and Hispanic children an equal educational opportunity.

An important example is racially discriminatory classroom assignment practices which, under the guise of meeting children's individual needs, place disproportionate numbers of minority students in segregated classes with a watered-down curriculum and less qualified teachers. Ability grouping and tracking impedes minority progress through the educational pipeline and leads to fewer minorities in science and mathematics. A recent study supported by the National Science Foundation documents a major cause for this underrepresentation.

> [B]lacks and Hispanics consistently demonstrate high interest in mathematics, but their lower achievement often places them in remedial programs from elementary school on, thus limiting their opportunities for

> science-related experiences. By the time blacks and Hispanics reach senior high school, the achievement gap between them and whites has widened, effectively blocking them from mathematics and science opportunities.[7]

In its investigations of tracking, ability grouping and gifted and talented classes which result in a high degree of racial segregation and inferior instruction, OCR must cease making affirmative findings of compliance until it has developed substantive policy standards. With the exception of admissions tests for vocational schools, OCR has no policy under Title VI on the use or misuse of tests which are largely responsible for, if not determinative in, assigning students to various classes and levels of instruction. OCR can not simply accept whatever school officials or test manufacturers say about the validity of the test. If the test or other criteria for placement results in a high degree of racially separate and instructionally inferior classes, OCR must employ standard disparate impact analysis in Title VI law to shift the burden to educators to justify the particular test (or tests) or to explain why another test or criteria which has a less severe, racially adverse impact cannot be substituted.

Prior to the repeal of the Emergency School Assistance Act, ESAA, (the predecessor of the Magnet Schools Assistance Program), OCR employed the ESAA regulations in Title VI investigations of in-

---

[7] Jeannie Oakes, Lost Talent: The Underparticipation of Women Minorities and Disabled persons in Science, p. vii (The Rand Corporation, February 1990). See also, Margaret E. Goertz, Course Taking Patterns in the 1980's, (Educational Testing Service, June 1989).

school segregation, and assisted thousands of minority students in being reassigned to mainstream, regular classes. If OCR were to adopt and enforce compliance policies in this area, many more minority students would escape placement in remedial math because they were prepared to take algebra, geometry and calculus.

Another illustration of a very significant area for investigation is whether math and science classes are equally available to minority students and whether the classes in all-black schools and districts are of equal quality with reference to teacher certification and laboratory equipment.[8] OCR has never conducted such compliance reviews. In order to target resources where the problem seems most acute, OCR should incorporate into its biennial Elementary and Secondary Schools Civil Rights Survey questions about whether math and science courses are offered and the pupil composition of those classes at various levels from remedial to advanced.

In the area of higher education, whites have increased their college attendance rates while the rates for blacks and Hispanics declined from 1976 to 1986.[9] Similar patterns occurred in the former de jure states which were operating under OCR-approved higher education desegregation plans. As those plans were due to expire in the 1985-86 academic year, OCR shifted its compliance

---

[8] See NAACP Legal Defense and Educational Fund, Mississippi's Future--Will The Schools Meet The Challenge? November 1988.

[9] American Council on Education, Eighth Annual Status Report-Minorities in Higher Education, p.1 (December 1989) Hereinafter cited as Eighth Annual Status Report.

standard from one of accomplishing results to one of implementing measures to which the states had committed themselves. So, for example, if a state fulfilled its commitment to increase recruiting at predominantly minority high schools, but the black college-going rate declined, the state was still found in compliance with Title VI. As the House Government Operations Committee reported in 1985,

> OCR will now rely on a good faith standard, rather than actual achievements, in measuring the success of desegregation plans, despite its internal findings that many systems of higher education have not eliminated the vestiges of illegal dual systems of education.[10]

In February 1988, two months after the District Court dismissed Adams v. Bennett, Secretary William Bennett announced that four states were in compliance with Title VI and six other states were in substantial compliance because they had implemented all, or almost all, of the activities in their plans. Three more states were found in compliance in March 1989. By contrast, OCR's current compliance standard conflicts with the position that the Department of Justice has taken in identical cases the Department of Justice in U.S. v. Louisiana returned to court for further relief when that state failed to effectively disestablish the racially dual system of higher education.[11]

---

[10] Committee on Government Operations, U.S. House of Representatives, Investigation of Civil Rights Enforcement by the Office for Civil Rights At the Department of Education, pp. 22-27 (December 1985).

[11] Compare letters from LeGree Daniels, Assistant Secretary for Civil Rights to the Governors of Arkansas, North Carolina (concerning on the community college system), South Carolina, and

One of Mr. Williams' priorities must be to restore OCR's pre-1988 standard and bring it in line with the Justice Department's standard. By doing so, the Assistant Secretary for Civil Rights-designee could also make an important contribution toward reversing the decline in minority participation in higher education during the decade of the 1980's. Outside the states which formerly had state-imposed racial segregation in higher education, OCR should turn its attention to obstacles which inhibit transfers from two-year to four-year colleges and to unequal program offerings between inner-city and suburban state institutions. The gap in access to and completion of college between whites and minorities continues to widen.[12] By instituting and enforcing a range of compliance standards for higher education institutions, OCR could contribute to remedying a critical national

---

West Virginia of February 9, 1988 and to the Governors of Georgia, Missouri and Oklahoma of March 17, 1989 with the letter from William Bradford Reynolds, Assistant Attorney General for Civil Rights to Counsel of Record in U.S.v.State of Louisiana et.al. of March 3, 1987. The House Committee on Government Operations noted that "OCR's refusal to act in the face of strong evidence that the vestiges of de jure segregation continue in the 10 States is a curious contrast to recent actions by the Department of Justice in a higher education desegregation case involving the State of Louisiana." Failure and Fraud In Civil Rights Enforcement By the Department of Education, p.35 (October 1987). Delaware was determined to be in compliance in September 1989, even though restoration of one building at Delaware State University has not been completed. Compliance findings in two states, Florida and Virginia, are pending completion of the renovation of buildings at Florida Agricultural and Mechanical University and at Virginia State University. OCR has not rendered compliance decisions on four states whose plans expired after the 1985-86 academic year. They are: Kentucky, Maryland, Pennsylvania, and Texas.

[12] Eighth Annual Status Report, pp.1-2.

problem.[13]

TRAINING LAWYERS AND INVESTIGATORS

The next Assistant Secretary for Civil Rights must re-institute training for investigators and lawyers in basic investigatory techniques, evidentiary standards of proof, and current developments in the law. Policies will not translate into adequate law enforcement unless OCR's staff understands how to apply them to a particular set of facts. It is imperative that policy be executed on a nationally uniform basis so that the investigations conducted by OCR's 10 Regional Offices are consistent.

Regional Office staff of OCR told the House Committee on Education and Labor that the quantity and quality of training was insufficient and of low priority.[14] In response to the oversight report of the Committee on Education and Labor, the agency now asserts that training is a high priority for FY 1990.[15] LDF hopes this is not an empty promise. With the agency's heavy workload and budget constraints, the Assistant Secretary should explore the possibility of securing training resources from the Office of

---

[13] Gary Orfield, Turning A Blind Eye: The Reagan Administration's Abandonment of Civil Rights Enforcement in Higher Education (Joint Center for Political and Economic Studies, Fall 1990).

[14] House Committee Report, p.51.

[15] OCR Response to House Committee Report, p. 35.

Personnel Management and the Civil Rights Division of the Department of Justice.

It is equally imperative that OCR and the Civil Rights Division of the Department of Justice follow the same policy in the same types of cases. Both OCR and the Justice Department receive complaints about "zone jumping." "Zone-jumping" is a common phenomena in desegregated school systems whereby white students surreptitiously transfer to another school district in order to escape a predominantly black school or one that is becoming so. When these students transfer out of their assigned attendance zone, their actions serve to impede school desegregation. The Justice Department brings and wins cases to enjoin the practice. OCR, on the other hand, investigates and finds no violation.

The two agencies have different policies. The Eleventh Circuit Court of Appeals has upheld the Justice Department's argument that the impact of "zone jumping" on a district's desegregation plan is measured by the numerical effect on the individual schools from which white students are transferring and by whether the change in an individual school's racial composition results in a perception of the sending or receiving school becoming more racially identifiable.

The Justice Department's position is followed by both the Eleventh and Fifth Circuits.[16] Nevertheless, OCR investigations

---

[16] United States v. Lowndes County Board, 878 F. 2d 1301 (11th Cir. 1989); Lee v. Eufala City Board of Education, 573 F.2d 229 (5th Cir. 1978).

measure the impact of "zone jumping" on a desegregated school system by looking only at the resulting numerical change on all schools in the district. The question of the "perception" of a school as being more racially identifiable is ignored.[17]

SEEKING ADMINISTRATIVE ENFORCEMENT AND FUND TERMINATION

Critical to an effective law enforcement operation is a clear, unencumbered system of issuing formal findings of a civil rights violation. A police officer could never issue a traffic ticket if he had to get the approval of the chief of police. Yet that is the equivalent of what happens in the Department of Education. Indeed, OCR no longer has control over the process. A finding of a violation by a Regional Office has to be sent to Washington. Only OCR Headquarters can approve a Letter of Finding that the law has been violated. The violation-finding not only has to be cleared by multiple layers of lawyers within OCR, but it is also reviewed by the General Counsel's Office and frequently by lawyers in the Secretary's office. This multi-layered process encourages second-guessing at every stage, thus allowing room for reinterpretation by department officials outside OCR who may be more interested in protecting the Secretary's flank than in the civil rights of students or teachers. Even in cases where the recipient has refused OCR access to records or to an on-site investigation, OCR has to clear all the way up the chain of command permission to

---

[17] Letter To Dr. J. Terry Jenkins, Superintendent Floyd County School District, Rome, Georgia from Jesse L. High, Regional Civil Rights Director, Region IV (Atlanta), June 30, 1989.

refer the matter to an administrative law judge.

The whole process is apparently designed to function in a manner which avoids finding any receipt in violation. Knowing this, Regional Offices have supported the practice of attempting to negotiate a corrective action plan with the recipient in order to avoid the interminable delay and inevitable return of the draft Letter of Finding.[18]

In order to be an effective Assistant Secretary, Mr. Williams must secure for himself the final authority to issue Letters of Finding on noncompliance and to refer cases for administrative enforcement proceedings. This will require the full support of the Secretary and the General Counsel who can now second guess and over rule the Assistant Secretary.

The Letter of Finding is only the beginning of the enforcement process. If OCR secures an acceptable compliance remedy, the matter ends there. But in those few cases where the recipient is recalcitrant, OCR's next step is to issue a Notice of Opportunity for Hearing which sends the matter to an administrative law judge. But OCR cannot initiate that step without clearing the same matter through the same multi-layered process all over again.

Barring a settlement of the case at any point in the administrative enforcement process, the matter ultimately comes to the Secretary of Education who is the only person authorized by statute to terminate funds. But if the law is to mean anything, that sanction for violating the law must be used when all attempts

---

[18] House Committee Report, pp. 31-32.

at remedying the violation fail. The Assistant Secretary has an obligation, as an officer of the law, to see to it that these cases do not sit on the Secretary's desk forever. Among the many things that Mr. Williams ought to do when he arrives at OCR is to get Secretary Cavazos to act on the Title VI student assignment case against River Rouge City Schools, Michigan, has been on sitting on the Secretary's desk for ten years with no action being taken.[19]

ADVISING THE PUBLIC, RECIPIENTS AND BENEFICIARIES OF CIVIL RIGHTS ISSUES

An Assistant Secretary for Civil Rights must be a public spokesman on civil rights matters which effect the education enterprise. In the continuing national dialogue over improving educational performance, the Office for Civil Rights must fill a void which has heretofore existed in formulating national and state policies. One of the most efficient means of promoting compliance with the laws is to prevent violations from occurring in the first place.

As issues emerge, such as the education of homeless and immigrant children and parental choice, OCR should provide guidance to public officials such as the National Governors Association, Chief State School Officers, higher education officials, as well as to public and private organizations which work on behalf of minorities, women and the disabled.

---

[19] Office for Civil Rights (OCR) Litigation/Enforcement Docket, p.9 (April 14,1989).

In addition to new issues, this Nation faces enduring problems of racial discrimination and segregation in elementary and secondary schools. There is widely documented evidence of increasing segregation and resegregation in America's public schools,[20] yet OCR does not initiate investigations unless it receives a complaint.

That concludes my prepared remarks. If this Committee and the full Senate act to confirm Mr. Williams's nomination, the Legal Defense Fund wishes him well in his very challenging assignment.

---

[20] "Divided We Stand--The Resegregation of Our Public Schools," The Atlanta Constitution, September 27 - October 3, 1987.

Senator SIMON. Thank you very much, and your full statement will be entered in the record, as well that of the other witnesses.

Senator SIMON. Ms. Vargyas, very happy to have you with us.

Ms. VARGYAS. Thank you very much, Senator.

I would like to start by commending this committee and you personally for holding these hearings on this very important matter. The position of Assistant Secretary for Civil Rights with direct responsibility for OCR is a post of enormous importance. Despite the critical importance, it has been clearly demonstrated, as you and Ms. McClure have discussed, OCR has had neither the leadership nor the commitment over the past 10 years to make anything approaching a meaningful contribution to the effort to eliminate discrimination from our educational system.

In considering Mr. Williams' nomination, it is, therefore, essential to address the nature of the task before him to assure that OCR becomes a serious player in this enormously important effort.

Before turning to these questions, I would like to take a moment just to look at some of the gender equity issues which are before us. Sometimes they do not receive first-drawer treatment, but it is terribly important to look at the problems confronting girls and women, and, all to disproportionately, minority girls and women who face a very, very serious double jeopardy in gaining equal access to opportunities.

To talk very quickly about the issues that we see coming before us in the 1990's, some of them developing issues, some of them, unfortunately, problems which have been with us for all too long, we have a very serious under-representation of girls and women in math, science, computer, and technical careers. We as a Nation can no longer afford to squander over half of our workforce and not to prepare them for the jobs of the next century.

As a piece of this, there are enormous problems of sex segregation of vocational education programs, with women and girls heavily concentrated in traditionally female, nontechnical, low-wage areas. Sexual harassment is a major problem at all levels of education confronting both students and employees, including teachers. I was very heartened to hear Mr. Williams talk about the important issues of racial harassment, which are a national scandal and which must be dealt with. But we have to confront this very pernicious problem as well.

There are additional other serious gender discrimination problems in employment in education. Discrimination against females in education-related sports is endemic, and young women lose millions, if not hundreds of millions of dollars, of athletic scholarships as a direct result of this, as well as many of the other opportunities. There are also very serious problems of very blatant discrimination in employment, the employment piece of education athletics.

We have to deal with the very serious problems confronting pregnant and parenting teens. And in looking at the dropout problem, which, again, I was very happy to hear Mr. Williams talk about, we know that over 40 percent of female dropouts do so directly because of problems dealing with pregnancy and parenting. In fact, that number is probably low because the record shows that many of these young women who drop out of school shortly thereafter

become pregnant and parents. And so dealing with these particular problems must be a key element of the dropout prevention strategy which is so very important.

I would like to echo Phyllis' discussion of standardized tests. We have increasingly a test-driven educational curriculum. We know that there are many serious biases in these tests dealing with population groups, very much including young women and very disproportionately affecting minority young women. We need standards. We need policies. We need to address this problem.

The challenge to the new Assistant Secretary is clear. Again, to echo what has already been said, OCR must serve the double function of a law enforcement agency, but also not just to use the carrot of commendations but must give people the tools to comply with the law. In my view, a great deal of the failure of compliance is because of ignorance. OCR has fallen down seriously in the task of developing and distribution policies on many of these issues. I have heard educational administrators say: Tell us what the law is, we will comply. Nobody knows on these very difficult issues around testing what exactly is discrimination in access to vocational education programs and so forth. People are desperately in need of guidance—there is none—to the point that many OCR policies are only available through Freedom of Information requests. This is an upside down kind of a system where school administrators, parents, students, their advocates, need to go through the Freedom of Information Act to find out what OCR policy is.

Related problems to the fact that these policy memoranda are in house and are by and large closely held secrets is that there is no public participation in developing them. I certainly look forward and hope that OCR will become a more open institution. Again, an example, I was contacted that OCR will be holding a briefing next week, I believe. They are distributing a new policy on gender equity issues in education-related athletics. Well, that is wonderful. It will be useful. But nobody, to my knowledge, outside of OCR—certainly not in the community advocating for equity for female athletes—was contacted. And when I asked if I could get a copy of this before the meeting so that I could at least review it and have questions at the meeting, I was told, well, you know, it is available under Freedom of Information. Then I was told they would send it to me. I haven't gotten it yet. In any event, this is what we are dealing with.

The issues which have already been discussed about compliance reviews are terribly important. The compliance review process must enhance the complaint process and not be simply a mirror image. Obviously, for somebody to file a complaint, it means that they know about the process and they have some wherewithal to use the process. And compliance reviews must, I think, be designed to get to the interests and the people who don't have that access, who don't understand how to use the system, and also to develop new areas which perhaps people aren't even aware that there is something to file a complaint over. The investigations, which has been certainly well documented investigations, the House has undertaken some excellent studies. We have seen all too often superficial, inadequate investigations, settlements on information before

investigations are completed, and failure even to assure compliance with those settlements.

We have to demand full and thorough investigations, settlements which are entered into only upon a full understanding of the facts. There have to be mechanisms to assure meaningful compliance. And we have got to be very tough about referring cases for enforcement where the compliance process doesn't work. The compliance process is not an end in and of itself. There is an enforcement process.

All throughout, OCR must provide the information and technical assistance to make compliance feasible and possible. Finally, OCR must start reaching and developing policies for victims with multiple discrimination. It is well established that women of color, women with disabilities, older women—heaven forbid they fall into more than two categories—or any permutation thereof, face particularly egregious and difficult problems. We have seen virtually no policy efforts to address these issues. This has been a major lack in OCR's activities, and we hope that this will be remedied.

In accordance with our usual custom, my office has not taken a position on Mr. Williams' nomination, although we do see some very welcome indications in his background with the Department of Justice, with the Legal Services Program in Texas, that he has an understanding of and sensitivity to many of these issues. He also has an encouraging record as a manager in the Department of Treasury. We certainly look forward to working with him if he is confirmed to make OCR once again a serious actor in the effort to eliminate discrimination, and we also commend you, Senator, for planning to follow up on this. We would very much like to be of any assistance that we can be to you and to this committee in assuring meaningful oversight of OCR.

[The prepared statement of Ms. Vargyas follows:]

PREPARED STATEMENT OF ELLEN J. VARGYAS

My name is Ellen J. Vargyas and I am pleased to be here today in my capacity as an attorney with the National Women's Law Center where I specialize in issues of educational equity. The National Women's Law Center is a private, non-profit legal organization devoted to developing and protecting women's legal rights. Since its enactment in 1972, one of our key priorities has been the enforcement of Title IX, the federal law which prohibits sex-discrimination in federally funded education and which is administratively enforced by the Department of Education's Office for Civil Rights.

My experience in this area includes my current service as Chair of the National Coalition for Women and Girls in Education, a coalition including nearly fifty organizations devoted to achieving sex-equity in education. Further, I have litigated a series of cases raising key Title IX issues including gender-discrimination in athletics, pregnancy-based discrimination, the extent of available remedies, and the nature of Title IX's prohibition against sexual harassment. I have written and spoken widely on the question of sex-equity in education and routinely provide technical assistance and advice to attorneys, school administrators, teachers, coaches, parents, students, and other interested persons regarding the enforcement of Title IX, very much including the role played by OCR.

We commend the Committee for holding hearings on the nomination of Michael Williams. The position of Assistant Secretary for Civil Rights in the Department of Education, with direct responsibility for OCR, is a post of enormous importance.

In addition to Title IX, OCR also has jurisdiction over the other key statutes which prohibit discrimination in education, including Title VI which prohibits discrimination on the basis of race and national origin, Section 504 which prohibits discrimination on the basis of handicap, and the Age Discrimination Act. Despite the critically important nature of these responsibilities, OCR has had neither the leadership nor the commitment over the past ten years to make a meaningful contribution to the effort to eliminate discrimination from our educational system. In considering Mr. Williams' nomination, it is therefore essential for this Committee to address the nature of the task before him in assuring that, once again, OCR becomes a serious player in the fight to assure equal educational opportunity for all regardless of their gender, race, disability or age.

Before turning to these questions, I would like to take a moment to review the many equity problems which confront women and girls in education. Let me be crystal clear in this regard: on-going gender-discrimination in education has a devastating and broad-based impact. Indeed, it not only detrimentally affects the girls and women -- disproportionately racial and ethnic minority group members -- who are denied access to the education, training, and jobs they need to provide for themselves and their families. Based on the well-documented projection that many of the new jobs which will emerge over the next decade and beyond will go unfilled for want of people with the necessary skills to

fill them -- all too many of them women -- this discrimination will also have exceedingly damaging consequences for our economy. Recognizing the importance of the problem and taking the necessary steps to achieve gender-equity in education must be a national priority.

Examples of the many serious and ongoing problems of gender-equity in education include:

♦ Girls and women at every educational level are substantially underrepresented in math, science, computer, and other technical courses and programs.

♦ Major problems of sex-segregation in vocational education programs persist at both the secondary and post-secondary levels with girls and women heavily concentrated in traditionally female, non-technical and low-wage areas.

♦ Sexual harassment is a problem of major proportion at both the secondary and post-secondary level with women as victims both in their capacity as students and employees of educational programs and institutions.

♦ Gender discrimination in education-related employment, in addition to sexual harassment, remains a serious problem with women concentrated in lower level jobs and receiving lower salaries than their male peers regardless of their job level.

♦ Discrimination against females in education-related sports activities is endemic. Girls and women have substantially fewer opportunities to participate and receive significantly less support than their male peers in virtually every aspect of

secondary and post-secondary school athletics, including scholarship assistance. In addition, women suffer from widespread employment discrimination in education-related athletic programs.

♦ In the area of health care, and despite explicit regulations to the contrary, many post-secondary institutions have failed to provide health coverage for pregnancy and gynecological services on the same basis as other illnesses and disabilities.

♦ There are serious deficits in the educational opportunities provided to pregnant and parenting teens which have devastating consequences for this particularly at-risk population. Indeed, while it is clear that pregnancy and parenting play a major role in contributing to female drop-out rates, only the most minimal attention has been paid to these young women in drop-out prevention programs.

♦ Many of the standardized tests used so widely in our education system reflect a serious gender-bias. For example, females score, on average, 60 points lower than males on the SAT in spite of the fact that the SAT is justified as a predictor of first-year college grades and women consistently receive higher grades than their male peers. As a result of this score differential women lose out in many of the benefits pegged to SAT scores ranging from college admissions to competitive scholarships (women receive only one-third of the prestigious National Merit Scholarships) to access to gifted and talented

programs for junior high school-age students. Similarly, serious problems of gender-bias pervade the Armed Services Vocational Aptitude Battery which is used by high schools across the country in connection with their vocational education programs. The widely gender-diverging scores on this test -- which apparently has not been validated for uses in connection with the civilian job market -- substantially contribute to the channelling of girls and women into traditionally female, non-technical and low wage jobs.

♦ Research shows that the structure of lessons and the dynamics of classroom interaction, to this day, all too often create an environment alien, if not hostile, to girls. Indeed, patterns of differential treatment sometimes are so deeply ingrained that even teachers who strive to be fair and impartial are not aware of them. The fall-out is seen in the problem areas presented here as well as many others.

♦ Finally, the widespread lack of availability of child care effectively deprives many women of access to education at both the secondary and post-secondary level -- the education they so desperately need to enable them to provide for their families.

The challenge to the new Assistant Secretary is clear. The resources of OCR must be marshalled effectively and aggressively to eliminate gender-discrimination -- along with other equally pernicious and prevalent forms of discrimination -- in education. Because the laws prohibiting such discrimination have long been on the books, OCR must recognize that, above all, its basic

function is to serve as a law enforcement agency. There are two necessary components to successfully achieve this goal. First, violators of the law must understand in no uncertain terms that their behavior will not be tolerated. Investigations must be thorough and sanctions for non-compliance must be certain. But OCR also has an important responsibility to educate educational institutions -- along with students, parents, advocates, and other interested parties -- regarding the nature of their rights and responsibilities. Compliance is a most elusive goal if this information is not available. We suggest that OCR take, at least, the following steps to achieve the successful enforcement of education civil rights laws:

♦ OCR must substantially enhance its role in developing and promulgating policy interpretations of the law. Major enforcement problems are raised by two interrelated problems. First, there has been no policy development on many of the key sex-equity issues set out above. Second, those policy memoranda and positions which exist are virtually all in-house. There has been no opportunity for public comment as they are developed to assure that they appropriately address the problems. Further, they are unavailable to provide guidance to education institutions, students, parents, or their advocates across the country.

♦ OCR must develop strategies for the effective use of the compliance review process both to assure compliance and to develop policy rather than simply relying on the often haphazard nature of the complaint process for these purposes. For example,

a key sex-equity problem currently in our schools is that pregnant and parenting students do not receive equitable educational opportunities and the necessary support to continue their education. Compliance reviews targeted to this important question would put schools clearly on notice that Title IX's prohibition against discrimination on the bases of pregnancy and parental status are to be taken seriously at the same time that they would assure compliance in the particular schools which are the subject of the compliance reviews.

♦ OCR must end the practices of the previous decade where, by way of example, it routinely conducted superficial and inadequate investigations, accepted settlements before investigations were completed, failed to follow up to assure compliance with even these agreements, and referred exceedingly few cases to the Department of Justice for enforcement. These and other failures to properly enforce the laws within its jurisdiction have been the subject of lengthy litigation in two companion cases, Adams v. Cavazos and WEAL v. Cavazos in which we are counsel. Management must demand full and thorough investigations, enter into settlements only upon a full understanding of the facts, assure meaningful mechanisms for monitoring compliance, and unhesitatingly refer cases for enforcement where the conciliation process fails.

♦ OCR must develop an active program to provide information and technical assistance on compliance with the civil rights laws. As I have already discussed, a key component of securing

compliance with the law is to assure that individuals and institutions have full knowledge of what their rights and responsibilities are.

♦ OCR must develop -- and implement -- policies for addressing the problems raised by multiple discrimination. It is well-established that women of color, women with disabilities, and older women -- let alone victims of triple discrimination -- face particularly severe equity problems. To date, however, although OCR has jurisdiction over all of the relevant statutes, it has effectively ignored the plight of these women. This cannot continue.

♦ OCR must provide detailed public reports on its activities in a manner which will enable the public to understand what it is -- and is not -- doing. This is all the more important since the reporting requirements which had been imposed in connection with the WEAL and Adams litigation are not currently in effect.

In accordance with its usual custom, the National Women's Law Center has not taken a position on Mr. Williams' nomination. Nonetheless, we find encouraging his experience at the Department of Justice and with a Texas legal services program and hope that it has provided him with an understanding of and commitment to the importance of civil rights enforcement. We look forward to working with him, if he is confirmed, in the critically important task of restoring the Office for Civil Rights to its proper role in assuring that the ugly and destructive face of discrimination is eliminated from our nation's education system.

Thank you very much.

Senator SIMON. Thank you very, very much for your excellent testimony.

Our next witness is Paul Igasaki, who has testified here before. We are very pleased to have you with us again.

Mr. IGASAKI. Thank you, Mr. Chairman. Thank you for this opportunity to testify and for your questions to Mr. Williams regarding our community's concerns.

The Japanese American Citizens League is pleased to share with this committee its views on the nominations of Mr. Michael Williams as Assistant Secretary of Education for Civil Rights. While we have not had direct experience with Mr. Williams or his work, we have an ongoing interest in the work of the Department he will direct and have concerns in that regard that should be taken into account in considering his nomination.

Our interest in the Office of Civil Rights and in the work Mr. Williams would oversee stems both from our ongoing work as an organization interested in the civil rights of all Americans and in our particular concern regarding allegations that some universities are discriminating against Asian Americans in their admissions processes.

Because of these interests, it is our view that the person who heads the Office of Civil Rights should be sensitive to the complexities of the admissions process, which means that he or she should have some understanding and experience with higher education, as well as to the various civil rights concerns involved in college admissions, which suggests a background in civil rights issues or work.

We are pleased, for example, to see that Mr. Williams has a background in civil rights prosecution, and case management issues, as my remarks will demonstrate, are very relevant and very important to Asian Americans concerned with college admissions.

From the outset, it must be acknowledged that the issue of anti-Asian discrimination in college admissions is much more complicated than it first appears. Our experience, along with that of other Asian groups working on this issue, is based upon years of work at the local level and at a variety of different universities. While any discrimination or conscious effort to reduce or limit the number of Asian American students constitutes illegal discrimination under existing law, unless an institution establishes an explicit ceiling for the number of Asian American students admitted to each class, it may be very difficult to determine whether that discrimination is actually occurring.

An example of some of the methods that we have discovered that have been utilized include arbitrarily imposed minimum SAT verbal scores without commensurate SAT math minimums that were imposed at a time when a university administration was concerned that a number of Asian Americans were increasing on campus beyond that which they were comfortable with.

We are very concerned that the Office of Civil Rights, which provides us the best hope at getting at the information necessary to identifying anti-Asian discrimination in college admissions, is not proceeding at a pace and in a style that we are comfortable with. Their work to date has not inspired community confidence that our concerns will be handled expeditiously or with sensitivity.

Investigations of both undergraduate and graduate programs at the University of California at Los Angeles and at Harvard University have taken an increasingly long time to complete. Initial announcements of those investigations took place some 2 years ago. We have heard varying target dates from the staff and in the newspapers ranging from January to May of this year. I know that this is a complicated issue, but how long must our community wait to find out what is going on at these university, and whether, in fact, there is indication or evidence of discrimination that we can act upon?

It is clear that the need for professional management and leadership in the Office of Civil Rights exists, both to increase efficiency and to inspire public confidence. Community concern over the problem of discrimination in Asian American admissions began when examination of statistics demonstrated that, despite rapidly increasing numbers of Asian American applicants at prestigious universities, admissions levels remained relatively constant. At some universities, admissions levels for Asian Americans lagged behind that of white applicants, despite higher average test scores and grades.

An example of a place where we found that to be occurring was the University of California at Berkeley. In an example of the kind of cooperation we hope to see in dealing with this problem, the University of California responded to pressure from student groups and community organizations, acknowledged the problem, set up a task force to deal with the problem, and, in fact, changed many of their policies. Since then, we have found admission rates for Asian Americans more commensurate with that of the majority group and at a much more responsive level based upon what we see in terms of application rates.

The motivation for anti-Asian discrimination is evident. Changing demographics probably is at the top of the list. When I began my undergraduate work at the Northwestern University, there was but a handful of Asian American students there with me. Recently, I returned there and saw to my surprise Asian students virtually everywhere I looked. They are not a majority by any means, but the numbers have increased significantly. This is due primarily to the changes in demographics but also due to the Asian cultural emphasis on education and relatively high average performance on tests, leading to very large student populations at some of our more prestigious universities.

While we support university efforts for a diverse student population, any decisions taken that are designed to or motivated by an effort to decrease the Asian student numbers we believe is racial discrimination and illegal under current law.

Asian community advocates have been clear that we do not believe that affirmative action programs for other minorities are to blame for anti-Asian discrimination where it has apparently occurred. Opponents of affirmative action programs have sought to exploit Asian concerns over the admissions process to politically target programs that benefit other minorities and that have, in fact, benefited Asian Americans in the past.

We fear that our legitimate concerns are being used by some for divisive political purposes. There are some that have speculated

that the delays in obtaining the reports on UCLA and Harvard may have something to do with these political efforts. For now, we will accept at face value the good will and the assurances of the Office of Civil Rights that their inquiry is not politically motivated and that there is no specific targeting of affirmative action programs in attempting to resolve Asian concerns. But the longer the delays in receiving these studies, the more plausible such speculation becomes. As a civil rights organization, the JACL supports affirmative action programs as a means to overcome the effects of historic discrimination. The law allows for such programs, and the JACL supports the principles of equal opportunity that they represent. Given the increasing inter-ethnic racial tensions occurring in our cities today, we are all the more resistant to efforts to pit racial minority groups against each other. It is simply not necessary to limit the opportunities for African Americans, Hispanic Americans, American Indians or women in order to stop discrimination against Asians. We hope that this will not be allowed as regards the college admissions issue.

For all these reasons, it is clear that the person charged with the responsibility of advancing civil rights concerns in the U.S. Department of Education must be a person of integrity and professionalism, committed to and understanding of the important American value of equal educational opportunity for all people. It is this context that Asian American concerns should and must be addressed.

We thank you for holding these hearings, Senator, and we thank you for the opportunity to share our thoughts. We are especially grateful for your interest in these issues and your commitment to following up and monitoring the Office of Civil Rights in this regard. Thank you.

[The prepared statement of Mr. Igasaki follows:]

PREPARED STATEMENT OF PAUL M. IGASAKI

Mr. Chairman and Members of the Committee:

The Japanese American Citizens League (JACL) is pleased to share with this Committee its views on the nomination of Mr. Michael L. Williams as Assistant Secretary of Education for Civil Rights, for the U.S. Department of Education. While we have not had direct experience with Mr. Williams or his work, we have an ongoing interest in the work of the department he will direct and have concerns in that regard that should be taken into account in considering Mr. Williams' nomination. For this reason, we neither support nor oppose his nomination, but only raise questions that should be considered in relation to any nominee for this important position.

Our interest in the Office of Civil Rights and in the work Mr. Williams would oversee stems both from our ongoing work as an organization interested in the civil rights of all Americans and in our particular concern regarding allegations that some universities are discriminating against Asian Americans in their admissions processes.

Because of these interests, it is our view that the person who heads the Office of Civil Rights should be sensitive to the complexities of the admissions process, which means that she or he should be familiar with higher education, as well as to the various civil rights concerns involved in college admissions, which suggests a background in civil rights issues or work.

From the outset, it must be acknowledged that the issue of anti-Asian discrimination in college admissions is much more complicated than it first appears. Our experience, along with that of other Asian groups working on this issue, is based upon years of work at the local level and with a number of different universities. While any discrimination or conscious effort to reduce or limit the number of Asian American students constitutes illegal discrimination under the law, unless an institution establishes an explicit ceiling for the number of Asian students admitted to each class, it may be

very difficult to determine how or even whether anti-Asian discrimination is taking place. This is further complicated by the lack of information available on the internal workings of the admissions process and the limited information as to the reasons for non-admission that the applicant receives.

The mandate of the Department of Education and its Office of Civil Rights is all the more important in this light. They are charged with enforcing compliance with Title VI of the Civil Rights Act of 1964 by educational institutions that receive federal funds. This Act prohibits discrimination by race or national origin. The Department of Education has the power and the authority to investigate institutions to determine whether such discrimination is taking place. Short of a lawsuit and the discovery available in that process, the Office of Civil Rights provides the best hope for getting at the problem of anti-Asian discrimination in college admissions.

We are very concerned, however, that the record of that office has to date not inspired community confidence that our concerns will be handled expeditiously and with sensitivity. Investigations of both undergraduate and graduate programs at the University of California at Los Angeles and at Harvard University have taken an increasingly long time to complete. Initial announcement of investigations at these schools came about two years ago. Last December, we heard Department spokespeople state, in the Chronicle of Higher Education, that we could expect these reports in January or February. At a meeting Asian civil rights advocates had with Department officials in late January of this year they declined to provide target dates. At a program in late April, a department official suggested that some of the reports should be completed in May. I know that this is a complicated issue, but how long must we wait? In addition to the delays in completing and releasing these studies, there have been allegations that Department

officials lost complaints filed by Asian American complainants. I cannot confirm the validity of these charges and we have no information that such complaints were even filed. But the fact that such charges were reported emphasizes the need for professional management in the Office of Civil Rights, both to increase efficiency and to restore public confidence.

Community concern over the problem of discrimination in Asian American admissions began when examination of statistics demonstrated that, despite rapidly increasing numbers of Asian applicants at prestigious universities, admissions levels remained relatively constant. At some universities, admission rates for Asian Americans lagged behind that of white applicants, despite higher average test scores and grades. While such gross statistics were not apparent at all universities and do not necessarily mean that discrimination is being practiced, they compelled closer scrutiny.

At the University of California, Berkeley, Asian American students, faculty and community organizations worked together to respond to sharp reductions in Asian freshmen enrollment following administration observations that the large Asian American population at Berkeley would soon reach a third of the student body. It was discovered that a minimum SAT verbal score had been adopted in the admissions process without a similar minimum SAT math score. Averages have demonstrated that Asians generally score higher on the math portion of the test. Other policies had been adopted that resulted in the reduction of Asian admissions. Between 1985 and 1987, despite rising numbers of applications and consistently high averages, Asian admission rates lagged behind that of white students. After considerable public education and support from community and government leaders, Berkeley admitted that its practices had harmed Asian applicants and apologized to the community, forming an Admissions Coordination Review Board to oversee changes to make the

system fairer for Asian Americans. The Berkeley situation demonstrates that this problem does not lend itself well to broad-brush national solutions, but that a local process, involving university administrations, community groups, faculty and students can achieve solutions. In such a process, the Office of Civil Rights can serve an important function in investigating and identifying the factors, such as an arbitrarily-adopted minimum SAT verbal score, that have resulted in anti-Asian discrimination.

The motivation for anti-Asian discrimination is apparent. The Asian cultural emphasis on education and relatively high average performance on tests has led to comparatively large Asian American student populations on the campuses of many of America's most prestigious universities. This has led to efforts, such as what occurred at Berkeley, to limit or reduce those numbers. While we support university efforts for a diverse student population, any decision designed to reduce the number of Asian American students is racial discrimination and illegal under current law. Noone was concerned enough about the consistent overrepresentation of white students to place a ceiling on their admissions or to take action to reduce their numbers. Affirmative action programs were created because of the startling underrepresentation of minorities and women.

Asian American community advocates have been clear that we do not believe that affirmative action programs for other minorities are to blame for anti-Asian discrimination where it has apparently occurred. Opponents of affirmative action programs have sought to exploit Asian concerns over the admissions process to politically target programs that benefit other minorities and that have benefited Asians in the past. Such programs helped open doors of opportunity for Asians in the 1970's both in education and in employment. It would be wrong to pull the ladder up behind ourselves as

Asians have achieved some statistical success in undergraduate admissions. Despite stereotypes to the contrary, Asians are still sadly underrepresented in many fields and academic programs. Most Asian groups, for example, are still underrepresented in both law schools and the attorney population. Further, with increasing antagonism towards Asian Americans in our society and increasing incidents of discrimination, we need affirmative action in overcoming barriers such as the "glass ceiling" that prevents many Asian employees from being fairly considered for management opportunities in the workplace.

From statements by politicians and the increasing appearance of the "model minority" stereotype that uses Asians to discredit the needs of other minority groups, we fear that our legitimate concerns are being used by some for divisive political purposes. There are some that have speculated that the delays in obtaining the reports on UCLA and Harvard are part of some political effort to widen the inquiry and to find some way to attack affirmative action programs through a look at Asian admissions. For now, we will accept at face value the assurances of the Office of Civil Rights that their inquiry is not politically motivated and that there is no targeting of affirmative action programs. But the longer the delays, the more plausible such speculation will appear. As a civil rights organization, the JACL supports affirmative action programs as a means to overcome the effects of historic discrimination. The law allows for such programs and the JACL supports the principles of equal opportunity that they represent. Given the increasing inter-ethnic racial tensions occurring in our cities today, we are all the more resistant to any efforts to pit racial minorities against each other. It is not necessary to limit opportunities for African Americans, Hispanic Americans, American Indians or women in order to stop discrimination

against Asians. We hope that this will not be allowed as regards the college admissions issue.

For all these reasons, it is clear that the person charged with the responsibility of advancing civil rights concerns in the U.S. Department of Education must be a person of integrity and professionalism, committed to and understanding of the important American value of equal educational opportunity for all. For it is in this context that Asian American concerns should and must be considered.

Thank you for the opportunity to share our thoughts with this Committee.

* * *

Senator SIMON. We thank you.

One general question. Let me ask all three of you, if you are in a position to know: is the staff in the Office of Civil Rights, which we all know has not done the kind of a job that it should have done, such that we really need more of a housecleaning than simply getting a new Assistant Secretary?

Ms. MCCLURE. Senator Simon, I do not believe that the staff as presently constituted is so infused with or controlled by Schedule C—that is, political—appointees. The vast majority of the staff at OCR are civil servants who are in their own ways devoted to what their job is. And I think you can get some sense of this when you look at the Hawkins' committee report that was based, really, on interviews and investigations at the regional offices.

I don't think it is going to take a lot of housecleaning. I do think leadership is the key. I think some of these other things we have mentioned—like some training, having some policies to follow, getting the agency more opened up and not to isolated as to what is going on in the world—will help a great deal. I think all of those things combined will help strengthen OCR's enforcement.

I should also say that in the past 10 years, some of the most well-trained people with the agency who had been there for a long time left. So I think that what you face is the agency has been having to hire a lot of younger people without the experience. It is particularly true in just getting clearances to hire lawyers. The OCR needs lawyers to prosecute cases before administrative law judges, and it is very hard to get the kind of talent they need if the delays in getting people off the rosters are so extensive that OCR loses out in competing for those kind of people.

Senator SIMON. Thank you.

Any further comments? Ms. Vargyas?

Ms. VARGYAS. I have nothing really to add on the substance of the staff, except to say that perhaps I am not that familiar with the staff and demonstrate some of the broader problems that I have been talking about. Certainly at the policy development level and in terms of ultimate decisions in terms of complaint resolutions and the dwindling number of compliance reviews, from my practice, which is not a directly hands-on OCR practice, the agency has become less and less relevant. So there has been less and less reason over the last years to really even know the answer to that question. I have no reason to believe that there are any inherent problems with the staff. Clearly, from our point of view, the problem has been at the top.

Senator SIMON. Mr. Igasaki?

Mr. IGASAKI. We haven't had sufficient experience to be able to make general statements regarding the quality of this staff. I would say that at the field level, particularly, we have had some good contacts with OCR in terms of their outreach work and what they are doing on the university campuses. They hired one of our former Chicago regional directors as a staff person, so we obviously think he is qualified. But we have had some good contacts with some of their regional and field staff.

Senator SIMON. Just one general question. I should know the answer, and I will have my staff check it out if you don't happen to know. As you look at the Schedule C appointees in the Department

of Education generally, do we have a pretty good representation of women, of minorities? Any of the three of you know the answer to that?

Mr. IGASAKI. As far as Asians, it appears—I don't have statistics on that, but just in the meetings we have had with them, there certainly have been a number of Asian staff at a fairly high level.

Ms. MCCLURE. Senator Simon, I am glad you raised that. There is an organization in the Department of black officials. They are a formally constituted part of the Department. I know they met with Secretary Bennett. I know they have met with Secretary Cavazos. That organization can give you the figures. Of course, you can get the figures anywhere.

That organization has been very concerned about the lack of presence of black Americans in top policymaking jobs. I don't mean just Schedule C's but senior executive office officials and high GS levels. What you find in the Department is that blacks are way over concentrated in the lower GS levels and vastly under-represented in the high GS levels.

But I want you to know that there is an organization of black Department officials, and I would be glad to provide your staff with the contacts.

Senator SIMON. Ms. Vargyas?

Ms. VARGYAS. I can't answer your question. At the most visible policy levels, women certainly appear to be under-represented. How far down that goes, I just don't know. But I would be very interested, as you find out, in looking at that.

Senator SIMON. We will let you know.

Ms. VARGYAS. Thank you.

Senator SIMON. Let me just add, I mentioned having an oversight hearing in 6 months or 8 months. Assuming that Mr. Williams is approved, and I anticipate he will be, I would like within the next few weeks to get him a letter with a series of questions that I will be asking him in 6 or 8 months: these are the standards, these are the concerns that we have. The three of you may have suggestions as to what we ought to be putting in that letter. We thank you for your testimony.

We will enter into the record the statement of Senator Kennedy.

[The prepared statement of the Chairman follows:]

PREPARED STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. I commend Senator Simon for holding this hearing on the nomination of Mr. Michael L. Williams for the Office of Assistant Secretary for Civil Rights at the Department of Education.. This is an office of critical imprtance within the Department, but one which has not enjoyed the kind of support that its important mandate demands.

I am disappointed that the Administration has taken over a year to send up a nominee to head the office, during which time it has operated under an acting assistant secretary. The Administration's failure in this area reflects its overall failure to make the Office of Civil Rights a Federal priority.

A 1989 report by the House Committee on Education and Labor cites numerous instances in which OCR fell short in its role as

watchdog of civil rights in federally funded education programs. The report raises serious questions about OCR's ability to monitor compliance, investigate complaints in a timely fashion, and provide direction in critical matters of policy. For example, the report says that OCR regional staff were nearly unanimous in agreeing that the national office had provided few useful policy directives since 1981. In addition, the report suggests that OCR has paid inadequate attention to cases of race and gender discrimination and has failed to become involved in many areas where its services are needed.

Some of the witnesses who will testify today will provide some specific guidance on areas of particular concern. I hope that Mr. Williams will take note of these concerns so that he will be prepared to carry out the important mandate of that office in good faith. This committee will continue, in its oversight role, to monitor the activities of OCR, and we will be looking for major improvement.

Senator SIMON. We will also enter in the record various letters regarding Mr. Williams.

[The information referred to and questions and answers follow:]

MAJORITY MEMBERS:
AUGUSTUS F. HAWKINS, CALIFORNIA,
Chairman
WILLIAM D. FORD, MICHIGAN
JOSEPH M. GAYDOS, PENNSYLVANIA
WILLIAM (BILL) CLAY, MISSOURI
GEORGE MILLER, CALIFORNIA
AUSTIN J. MURPHY, PENNSYLVANIA
DALE E. KILDEE, MICHIGAN
PAT WILLIAMS, MONTANA
MATTHEW G. MARTINEZ, CALIFORNIA
MAJOR R. OWENS, NEW YORK
CHARLES A. HAYES, ILLINOIS
CARL C. PERKINS, KENTUCKY
THOMAS C. SAWYER, OHIO
DONALD M. PAYNE, NEW JERSEY
NITA M. LOWEY, NEW YORK
ELENI POSHARD, ILLINOIS
JOLENE UNSOELD, WASHINGTON
CRAIG A. WASHINGTON, TEXAS
NICK J. RAHALL II, WEST VIRGINIA
JAIME B. FUSTER, PUERTO RICO
PETER J. VISCLOSKY, INDIANA
JIM JONTZ, INDIANA

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

MINORITY MEMBERS
WILLIAM F. GOODLING, PENNSYLVANIA
E. THOMAS COLEMAN, MISSOURI
THOMAS E. PETRI, WISCONSIN
MARGE ROUKEMA, NEW JERSEY
STEVE GUNDERSON, WISCONSIN
STEVE BARTLETT, TEXAS
THOMAS J. TAUKE, IOWA
HARRIS W. FAWELL, ILLINOIS
PAUL B. HENRY, MICHIGAN
FRED GRANDY, IOWA
CASS BALLENGER, NORTH CAROLINA
PETER SMITH, VERMONT
TOMMY F. ROBINSON, ARKANSAS

TELEPHONES
MAJORITY—(202) 226-7007
(TTY)—(202) 226-4944
MINORITY—(202) 226-3725
(TTY)—(202) 226-8737

May 18, 1990

The Honorable Paul Simon
Chairman
Subcommittee on Employment and Productivity
Unites States Senate
SD-644 Dirksen Building
Washington, D.C. 20510

Dear Mr. Chairman:

I would like to commend you on your decision to hold confirmation hearings on the Administration nominee for the position of Assistant Secretary, Office for Civil Rights, U.S. Department of Education.

It is extremely important that a highly qualified person assume the office of Assistant Secretary, especially in light of the poor record of civil rights enforcement activity as reported in my Committee's investigation of the manner in which OCR carries out its legal mandate.

There is no doubt the agency needs new leadership and this leadership should be committed to vigorous enforcement of the civil rights laws under its jurisdiction.

I firmly believe that your Subcommittee's hearings will assist in reaffirming Congressional intent to prohibit discrimination based on race, sex, national origin, handicap or age in all educational programs or activities funded by the federal government.

With best wishes.

Sincerely,

Augustus F. Hawkins
Chairman

AFH:sb

U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

MAY 21 1990

Honorable Edward M. Kennedy
Chairman, Committee on Labor
and Human Resources
United States Senate
428 Dirksen Building
Washington, D.C. 20510

Dear Mr. Chairman:

It is my very great pleasure to share with you and other members of the Committee my regard for Michael Williams, in support of his nomination as Assistant Secretary for Civil Rights in the Department of Education. Mr. Williams worked under my supervision in the Criminal Section of the Civil Rights Division for almost four years. He quickly established himself as one of our most effective and persuasive litigators, vigorously pursuing the prosecution of brutal police officers and violent racists, and winning even the most difficult cases wherever they might be tried.

Mr. Williams began his career with us in 1984. Shortly thereafter he prosecuted a police officer in Valley, Alabama who was ultimately convicted of several instances of brutalizing arrestees in his custody. Mr. Williams followed this victory with another successful prosecution in Arizona against an Apache County Deputy Sheriff who had assaulted a juvenile detainee with a flashlight. In each case, Mr. Williams was an impressive and effective advocate. Police misconduct prosecutions are particularly difficult to win, and these victories achieved by Mr. Williams are the result of his consummate advocacy and persuasive skills.

Mr. Williams was particularly aggressive in pursuing incidents of racial violence throughout the country. His first such prosecution occurred in Indiana, where he convicted a defendant who had threatened a black patron of a tavern and assaulted him with a weapon. He investigated and successfully prosecuted members of white racist groups in Idaho and the Middle District of North Carolina for interfering with the housing and

employment rights respectively of interracial and black families. He investigated several instances of arson against the homes of black families in the Louisville, Kentucky area and was responsible for solving, and obtaining convictions, in two of those incidents.

One of Mr. Williams' most time consuming and important cases involved his investigation of criminal activity by members and associates of the White Patriot Party in North Carolina. Over a period of two years, Mr. Williams directed an investigation that culminated in the conviction of the individual who was second in command of the White Patriot Party, as well as a top Lieutenant and three other members of the group. As a result of Mr. Williams' aggressive efforts, the leader of the White Patriot Party, Glenn Miller, decided to plead guilty to federal charges stemming from his conduct in the Party. The net effect of Mr. Williams' efforts was the elimination of what had been substantial criminal activity by the White Patriot Party throughout the state of North Carolina.

I must further note that Mr. Williams' vigorous pursuit of the members of the White Patriot Party for their violent actions was not without personal risk to him. He tried one of the cases under heavy security after death threats had been made against him. But he refused to be intimidated and insisted on pursuing the prosecution to its successful conclusion.

In short Mr. Williams is a dedicated, skillful and courageous civil rights attorney. It was a great personal pleasure for me to work directly with him during his almost four year tenure in the Civil Rights Division. He will bring his very substantial talents to his job as Assistant Secretary for Civil Rights at the Department of Education, and I urge your favorable consideration of his nomination.

Sincerely,

Linda K. Davis
Chief
Criminal Section

cc: Honorable Orrin G. Hatch

MAY-22-90 TUE 9:22 TO/LAW LIBRARY P.02

WEST TEXAS LEGAL SERVICES

600 E. WEATHERFORD
FORT WORTH,TEXAS 76102
(817) 336-3943

May 21, 1990

Honorable Edward M. Kennedy
U. S. Senator
Chairman
Committee on Labor and Human Resources
Washington, D.C. 20310-6300

RE: Mr. Michael Williams

Dear Senator Kennedy:

It gives me great pleasure to write this letter of recommendation for the above referenced individual who is the nominee to be Assistant Secretary for Civil Rights, U.S. Department of Education.

We are familiar with the responsibilities and scope of this important job function.

This position touches on the rights of all Americans.

I am knowledgeable about the qualifications and credentials of this nominee.

I have known Mr. Williams since he was an undergraduate student at the University of Southern California. Mr. Williams was an outstanding student leader at the University of Southern

California where he served as President of the Black Students Association.

After graduating with an undergraduate degree, Mr. Williams also enrolled in and graduated from University of Southern California with a Law Degree and a Masters Degree in Public Administration.

Mr. Williams then migrated back to his home town of Midland, Texas where he became involved in assisting low income individuals in asserting their constitutional rights. Mr. Williams tried to improve the lives of citizens in Southeast Midland County a low income area where he had grown up. We hired Mr. Williams to work as the director of the Midland office of West Texas Legal Services. He organized the office and hired the initial staff to provide services to indigent citizens in a five (5) county area surrounding Midland, Texas. Mr. Williams was an exemplary employee during his tenure with West Texas Legal Services.

I am familiar with Mr. Williams' management skills both from his experience as Director for the Midland office of West Texas Legal Services, and also from his service with the Midland Chamber of Commerce and the Midland County District Attorneys office.

Mr. Williams managed a substantial number of employees in each position. In each position the office was professionally managed for the betterment of the community.

Mr. Williams is held in high regard by the persons in Midland and Ector County, where most of his pre-governmental service was centered. He is respected in the Midland Legal Community as a very able trial lawyer.

Mr. Williams is a person of high moral character, possesses utmost integrity and is committed to carrying out the laws of this great nation.

I believe Michael Williams is eminently qualified to serve this nation as Assistant Secretary for Civil Rights U.S. Department of Education.

Sincerely,

Jesse L. Gaines
Deputy Director
West Texas Legal Services
JLG/mcd
cc: Honorable Orrin G. Hatch

EDWARD M. KENNEDY, MASSACHUSETTS, CHAIRMAN
CLAIBORNE PELL, RHODE ISLAND
HOWARD M. METZENBAUM, OHIO
SPARK M. MATSUNAGA, HAWAII
CHRISTOPHER J. DODD, CONNECTICUT
PAUL SIMON, ILLINOIS
TOM HARKIN, IOWA
BROCK ADAMS, WASHINGTON
BARBARA A. MIKULSKI, MARYLAND
ORRIN G. HATCH, UTAH
NANCY LANDON KASSEBAUM, KANSAS
JIM JEFFORDS, VERMONT
DAN COATS, INDIANA
STROM THURMOND, SOUTH CAROLINA
DAVE DURENBERGER, MINNESOTA
THAD COCHRAN, MISSISSIPPI
NICK LITTLEFIELD, STAFF DIRECTOR AND CHIEF COUNSEL
KRISTINE A. IVERSON, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, DC 20510-6300

April 4, 1990

To : Senator Kennedy
Pell
Metzenbaum
Matsunaga
Dodd
Simon
Harkin
Adams
Mikulski

Senator Hatch
Kassebaum
Jeffords
Coats
Thurmond
Durenberger
Cochran

From : Lisa Merman

Subject: Presidential Nominee Michael Lawrence Williams

For your review, attached is Part I of the disclosure form for Mr. Michael L. Williams to be Assistant Secretary for Civil Rights, Department of Education.

Attachment

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Williams (LAST) Michael (FIRST) Lawrence (OTHER)

Position to which nominated: Assistant Secretary - Civil Rights Date of nomination: 3/29/90

Date of birth: 31 (DAY) 5 (MONTH) 53 (YEAR) Place of birth: Midland, Texas

Marital status: Married Full name of spouse: Donna Nelson Williams

Name and ages of children: None

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Robert E. Lee H.S. Midland, Texas	9/68-5/71	H.S.	5/71
Univ. of Southern Calif. Los Angeles, CA.	9/71-5/75	B.A.	5/75
Univ. of Southern Calif. Los Angeles, CA.	9/75-1/79	J.D.	1/79
Univ. of Southern Calif. Los Angeles, CA.	9/76-1/79	M.P.A.	1/79

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Special Commendation Award - U.S. Department of Justice 11/88

Special Achievement Award - U.S. Department of Justice 3/88

Outstanding Performance Rating - U.S. Department of Justice '85, '86, & '87

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
State Bar of Texas	None	5/80 - Present
National Organization of Black Law Enforcement Exec.	None	1986 - Present
United Way of Midland	Vice President/ Board Member	1980 - 1984
Midland Chamber of Commerce	Board Member	1981 - 1984
Community Day Nursery	President	1982 - 1983

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Legal Assistant, District Attorneys Office, Midland, Texas, 8/78 - 2/79

Interim Director, West Texas Legal Services Midland, Texas, 2/79 - 1/80

Planner, Midland Chamber of Commerce, Midland, Texas, 1/80 - 12/82

Attorney (Solo Practice), Midland, Texas, 5/80 - 1/84

Assistant District Attorney, Midland, Texas, 1/84 - 10/84

Trial Attorney, U.S. Department of Justice, 10/84 - 6/88

Domestic Policy Analyst, Bush-Quayle '88, Washington, D.C. 6/88 - 11/88

Attorney, Cotton, Bledsoe, Tighe & Dawson, Midland, Texas. 7/88 - 11/88

Deputy, The American Bicentennial Presidential Inaugural, Washington, D.C. 11/88 - 1/89

Special Assistant to the Attorney General, Department of Justice. 1/89 - 4/89

Deputy Assistant Secretary (Law Enforcement), Department of the Treasury. 4/89 - Present

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Treasurer, Midland County Housing Finance Corp.

Member, Attorney General's Child Support Enforcement Advisory Group - (1983)

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

None

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No.

3. Has a commitment been made to you for employment after you leave Federal service?

No.

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I will request advice and counsel from the Office of the General Counsel - Education.

QUESTIONS SUBMITTED BY SENATOR SIMON TO MICHAEL WILLIAMS

1. Mr. Williams, the position of Assistant Secretary for Civil Rights is one of the three most important civil rights enforcement jobs in the Federal Government—the others being the head of the Equal Employment Opportunity Commission and the head of the Civil Rights Division in the Justice Department. I do not see anything in your background specifically related to civil rights enforcement, although you have had some experience in the criminal area. Please describe the nature and background of your experience in making or administering civil rights laws.

Answer. For three and a half years I was a Trial Attorney in the Criminal Section, Civil Rights Division, U.S. Department of Justice. (Please see the attached letter from Linda K. Davis to Senator Edward M. Kennedy.) Earlier in my professional career I was the interim manager of the Midland office of West Texas Legal Services.

May 21, 1990

Honorable EDWARD M. KENNEDY,
Chairman, Committee on Labor
and Human Resources,
United States Senate,
428 Dirksen Building,
Washington, D.C.

DEAR MR. CHAIRMAN: It is my very great pleasure to share with you and other members of the Committee my regard for Michael Williams, in support of his nomination as Assistant Secretary for Civil Rights in the Department of Education. Mr. Williams worked under my supervision in the Criminal Section of the Civil Rights Division for almost 4 years. He guickly established himself as one of our most effective and persuasive litigators, vigorously pursuing the prosecution of brutal police officers and violent racists, and winning even the most difficult cases wherever they might be tried.

Mr. Williams began his career with us in 1984. Shortly thereafter he prosecuted a police officer in Valley, Alabama who was ultimately convicted of several instances of brutalizing arrestees in his custody. Mr. Williams followed this victory with another successful prosecution in Arizona against an Apache County Deputy Sheriff who had assaulted a juvenile detainee with a flashlight. In each case, Mr. Williams was an impressive and effective advocate. Police misconduct prosecutions are particularly difficult to win, and these victories achieved by Mr. Williams are the result of his consummate advocacy and persuasive skills.

Mr. Williams was particularly aggressive in pursuing incidents of racial violence throughout the country. His first such prosecution occurred in Indiana, where he convicted a defendant who had threatened a black patron of a tavern and assaulted him with a weapon. He investigated and successfully prosecuted members of white racist groups in Idaho and the Middle District of North Carolina for interfering with the housing and employment rights respectively of interracial and black families. He nvestigate several instances of arson against the homes of black families in the Louisville, KY area and was responsible for solving, and obtaining convictions, in two of those incidents.

One of Mr. Williams' most time consuming and important cases involved his investigatin of criminal activity by members and associates of the White Patriot Party in North Carolina. Over a period of 2 years, Mr. Williams directed an investigation that culminated in the conviction of the individual who was second in command of the White Patriot Party, as well as a top Lieutenant and three other members of the group. As a result of Mr. Williams' aggressive efforts, the leader of the White Patriot Party, Glenn Miller, decided to plead guilty to Federal charges stemming from his conduct in the Party. The net effect of Mr. Williams' efforts was the elimination of what had been substantial criminal activity by the White Patriot Party throughout the State of North Carolina.

I must further note that Mr. Williams' vigorous pursuit of the members of the White Patriot Party for their violent actions was not without personal risk to him. He tried one of the cases under heavy security after death threats had been made against him. But he refused to be intimidated and insisted on pursuing the prosecution to its successful conclusion.

In short Mr. Williams is a dedicated, skillful and courageous civil rights attorney. It was a great personal pleasure for me to work directly with him during his almost 4-year tenure in the Civil Rights Division. He will bring his very substantial talents

to his job as Assistant Secretary for Civil Rights at the Department of Education, and I urge your favorable consideration of his nomination.

Sincerely,

LINDA K. DAVIS
Chief, Criminal Section

2. Is there anything in your background that would cause this Committee to be concerned about your nomination?

Answer. No.

3. The FY 1990 budget for the Office for Civil Rights is $44.6 million. The office has a staff complement of 801 full-time equivalents (FTEs). That is 17% of all the persons employed by the Department of Education. What can you point to in your background that would reassure the Committee of your ability to manage such a large budget and staff?

ANSWER. In my current position as the Deputy Assistant Secretary (Law Enforcement) at the Department of the Treasury, I am the Senior Policy Adviser to the Assistant Secretary where I have oversight responsibility for the Federal Law Enforcement Training Center, The United States Secret Service, the United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms. The Treasury Law Enforcement Family has a budget in exccess of $1.5 billion and approximately 10,000 special agents. In my capacity, I have been involved in the myriad of issues, problems and challenges, including but not limited to: (1) formulation of budgetary priorities; (2) development and implementation of program initiatives; (3) establishment of productive relationships within the Administration, the Congress, and the public; and (4) the enforcement of civil and criminal laws.

4. What, in your estimation, is the role of the Federal Government in assuring equal access to education?

Answer. The Federal Government should actively work toward ensuring equal access to education for everyone. OCR's role in working towards this goal is to enforce the four civil rights statutes that Congress has empowered OCR to enforce: Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color or national origin); Title IX of the Education Amendments of 1972 (prohibiting discrimination of the basis of sex); Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of handicap); and the Age Discrimination Act of 1975 (prohibiting discrimination on the basis of age.)

5. What role do you see for OCR in the area of public education and information, and in informing the public about their rights to equal educational opportunity?

Answer. OCR has a significant role in informing the public about their rights to equal educational opportunity. OCR should continue its Technical Assistance (TA) program, which provides information to the public about their rights under the statutes enforced by OCR, and provides information to recipients to assist them in voluntarily complying with the civil rights laws enforced by OCR. OCR should also continue the outreach activities currently conducted under the TA program.

5a. OCR data indicate that the majority of complaints filed with OCR are in the area of discrimination based on disability, under Section 504 of the Rehabilitation Act. Do you believe that educational and outreach efforts may be needed to inform Blacks, Hispanics, and other minority groups of their rights under Title VI and Title IX?

Answer. Educational and outreach efforts are necessary to inform all people of their rights. I am advised that OCR has made language minority issues the focal point of several TA outreach activities, and has published three TA pamphlets in Spanish: "Education and Title VI"; "Title IX and Sex Discrimination"; and "The Rights of Individuals with Handicaps Under Federal Law." OCR should continue these efforts to reach the Hispanic community and should strongly consider expanding its outreach efforts in other minority communities, to ensure that everyone is fully informed of their rights under Title VI and Title IX, as well as the Age Discrimination Act and Section 504 of the Rehabilitation Act.

6. OCR was criticized in the 1989 majority staff report of the House Education and Labor Committee for issuing few useful policy directives. The staff report found that "There was a consensus among OCR regional office staff that few useful, substantive policy directives have been issued since 1981." Moreover, in talking with state and local school officials, they, too, indicate that they receive little guidance from OCR. What steps will you take to ensure that OCR issues better policy guidance to education administrators on contemporary civil rights problems?

Answer. I have been informed that OCR has recently implemented a policy development agenda of significant educational civil rights issues, and has written several policy documents concerning some of the identified critical issues. If confirmed, I

intend to ensure that OCR develops clear policy guidance in those critical areas and fully informs education administrators.

7. Are you aware of whether OCR has informed schools of their legal obligations toward homeless children under Title VI, Title IX and Section 504? Will you give this area priority if you are confirmed as Assistant Secretary, and report back to this committee in this regard?Answer. It is my understanding that OCR, to date, has not informed schools districts of their civil rights obligations toward homeless children. School districts should, of course, serve all children within their jurisdiction, regardless of race, color, national origin, sex, or handicap. Insofar as the homeless are predominantly members of minority groups, there could be Title VI implications. A priority of mine will be seeing to it that OCR's regional offices have available the best data we can identify on the composition of the homeless population, which is, of course, in almost constant flux.

A second strategy to which I would give great consideration is initiating joint action by OCR and the Office of Special Education Programs to advise school districts of their obligation to educate homeless handicapped children. The Section 504 regulation and the Education of the Handicap Act both require the location and identification of all handicapped children who might need special education services.7b. Dr. John MacDonald testified before my subcommittee about the difficulty in counting the number of homeless children. I wonder if this type of information could be collected through the Elementary and Secondary School Civil Rights Survey (101) conducted by OCR, and if that might be a better way to get more accurate information? Do you know if this survey currently includes any questions regarding homeless children?Answer. The Elementary and Secondary School (E&S) Civil Rights Survey does not currently collect any information on homeless children. If confirmed, I intend to reexamine the E6S Survey for 1992 to determine whether OCR is obtaining data that is adequate to meet its mission and to determine what modifications, if any1 should be made to the survey. An area of consideration, inter alia, in this examination should involve homeless children.

8. Parental choice plans have been promoted as a way to improve the quality of education, especially for inner city students. Several states have adopted such plans (e.g. Minnesota, Arkansas, New Jersey). Last year, the Department of Education held five regional hearings to promote choice plans. Do you see any civil rights implications in these plans?

8a. Do you plan to issue any policy guidance on this subject?

Answer. I see a number of civil rights implications. We need to ensure that the choice plans—which seem to come in many variations—should not result in discrimination on the basis of race, color, and national origin.I am also concerned about the implications of choice plans for handicapped children. This past year, OCR responded jointly with the Office of Special Education and Rehabilitative Services to communications from the public regarding proposed choice programs. Choice plans must meet clear legal requirements for the location, identification, evaluation, and placement of handicapped children, so those children are appropriately served. The two offices have been cooperating to ensure that school districts are not provided conflicting guidance. I understand that all policy discussions of choice issues have been shared with the regional offices; as necessary, OCR will issue additional policy guidance.

9. OCR has indicated that all of OCR's policy documents are available upon request to recipients and the public at large. In fact, individuals have had to resort to filing Freedom of Information Requests in order to obtain OCR policy documents. Do you believe that OCR policy documents and statements should be easily available to the public? What will you do to ensure that this occurs?

Answer. I have been advised that OCR does, in fact, make a large number of documents available to recipients and other interested parties concerning the requirements of the statutes enforced by OCR. In addition, as suggested by the question, other individuals may seek OCR policy documents through the Freedom of Information Act (FOIA). Because I believe that OCR policy documents should be available to the public, if confirmed I will look into the matter further, and determine whether OCR can take steps to make these issuances more readily obtainable.

10. The Office for Civil Rights and the Department of Justice often are involved in similar cases, but sometimes have different positions. For example, a House Government Operations Committee report cites a letter from William Bradford Reynolds to the counsel in U.S. v. Louisiana to the effect that the state had fulfilled the objectives of its higher education desegregation plan. In this case, Brad Reynolds was on the right side of the issue. In contrast, OCR has recently found several states in compliance with Title VI simply on the grounds that they implemented the measures in their plans without regard to what those measures actually accomplished.

How do you plan to coordinate with the Civil Rights Division of the Department of Justice, particularly when you lack agreement on an issue?

Answer. OCR has a long record of working closely with DOJ in areas of mutual concern, and I anticipate that Assistant Attorney General for Civil Rights, John Dunne and I will, through periodic meetings together and with our senior staffs, continue that relationship.

11. In the past, the Office for Civil Rights has surveyed biennially a sample of school districts and schools to gather important civil rights data. The surveys are the Elementary and Secondary School Civil Rights Survey and the Individual School Campus Report. Together they provide important data on enrollment by race, sex, and handicapping condition on special education placements; discipline statistics, classroom assignments for specific grades and programs, etc. These so-called 101/102 surveys are the only source of national data on the composition of racial, gender, and handicapped student populations at the school level, and are extremely important in providing a solid data base relevant to civil rights concerns and enforcement. In your opinion, how important are national data gathering activities in this area? Will these activities be given a high priority under your administration?

Answer. Accurate and timely information is essential for policy development, as well as for assisting OCR in complaint, compliance and enforcement activities. I recognize that the E&S Survey is the only national data collection which includes racial/ethnic, gender, and handicapping data at the school district and school level, and thus is critical to carrying out OCR's mission. The data from these surveys are a valuable component in OCR's complaint investigation and compliance review programs. I believe funds have been requested in the FY 1991 budget to continue support for these surveys. If confirmed, I will request funding for these activities in subsequent fiscal years.

11a. Are you aware that the Fall 1988 101/102 surveys have not been released by OCR, thus will be at least 2 years old by the time they are released? Moreover, are you aware that the Fall 1990 surveys normally to be done this year are not on OMB's published list of surveys to be conducted this year?

11b. Will you look into this matter and report back to the Committee on the status of the 1988 and the 1990 surveys?

Answer. I am told that because of fiscal constraints, OCR has delayed the completion of the 1988 E&S Survey contract activities. As I stated at my confirmation hearing, if confirmed, I will take the necessary steps required to have the Fall 1988 Survey data released as soon as possible. I am not aware of why the OCR Fall 1990 Survey was not included in OMB's published list of surveys. However, I will report to you on the status of the 1988 and 1990 surveys.

12. In addition, I am concerned about the coverage and scope of the surveys. It was originally intended that all school districts above a certain size would be surveyed at least once every 6 years. An analysis of OCR records by the staff of Education Week revealed that the 1988 survey bypassed more than half of the school districts in the country, many of which have not been surveyed recently. Approximately 2,000 districts that were surveyed between 1978 and 1982 were not surveyed between 1980 and 1988. An additional 7,000 small districts have not been surveyed since 1976, when the last comprehensive civil rights survey of all school districts was conducted.

Answer. Thank you for this information. I share your concerns regarding the coverage and scope of civil rights related surveys.

12a. Would you agree that an adequate data base, that at a minimum includes information that can be extrapolated to a nationwide basis, is needed to monitor the extent of segregation and discrimination in our Nation's school districts?

Answer. Yes, such a database would be quite helpful.

13. The President and the Governors have committed the Nation to a series of education goals to be achieved by the year 2000. One goal relates to ensuring that U.S. students are the first in the world in mathematics and science achievement by the year 2000. We know that girls and women at every educational level are substantially underrepresented in math, science, computer and other technical courses and programs. Do you believe that it is an appropriate role for OCR to mount an initiative in this area?

Answer. Yes. As I stated in my opening remarks at my confirmation hearing, I firmly believe that for the U.S. to meet the challenges of the future all our students must be math and science proficient. OCR, through its enforcement program (complaint investigations, compliance reviews and technical assistance) should play a major role in ensuring that educational opportunities in this area are not denied women and minority students.In fact, OCR has already mounted an initiative in

this area by developing a pamphlet entitled What Schools Can Do to Improve Math and Science Achievement by Minority and Female Students.

14. Another major education goal is to dramatically reduce the drop out rate, and increase the high school graduation rate to 90%. We know that language minority students, and students with limited English proficiency (LEP) have inordinately high drop out rates—nearly 50% for Hispanic and Indian language minority students. Yet, the Educational Testing Service has reported that "The gap in reading performance of language minority students compared with their white non-language minority classmates suggests that the unique educational needs of pupils whose home language is not English are currently not being served sufficiently by the American educational system."

The Council of Chief State School Officers has reported that a significant percentage of LEP children do not receive language related educational services in either bilingual or ESL classes. What are the obligations of the Office for Civil Rights to address these kinds of issues?

Answer. Under the regulation implementing Title VI of the Civil Rights Act of 1964, districts must provide language remediation services for national origin minority students who need such services to participate effectively in the district's educational program. Therefore, OCR must investigate complaints concerning inadequate language remediation services. It may also be appropriate to conduct compliance reviews and to provide technical assistance in this area, to the extent that OCR's other enforcement obligations and resources permit such activities.

14a. As Assistant Secretary for Civil Rights, would you initiate any special compliance effort to assure that the LEP students are receiving equal educational opportunity?

Answer. I assure you that ensuring that LEP students receive an equal educational opportunity would receive high attention under my leadership at OCR.

15. Between 1977 and 1980, OCR carried out nearly 600 Lau reviews, based on the Supreme Court's decision in Lau v. Nichols. That decision concluded that a school district must take affirmative steps to rectify language deficiency, where inability to speak and understand the English language excludes national origin minority children from effective participation in the educational programs offered by a school district. In FY 1989, OCR carried out only 138 compliance reviews, of which only 13 were initiated on the basis of race or national origin issues. Do you believe that this is a sufficient level of activity in this area? What plans do you have for increasing the number of Lau reviews that OCR conducts?

Answer. OCR's recent level of activity in this area may have beentoo limited. I will ensure that OCR will maintain a more appropriate level of Lau related compliance reviews.

16. I understand that language minority and LEP children are often inappropriately classified as mentally retarded or learning disabled, when their problem is often simply that they speak a language that the school is unprepared to teach in. Do you believe that the Office for Civil Rights should examine whether LEP students are mislabeled or misplaced, in addition to whether they have access to instruction in a language they understand? Will you place a higher priority to these problems than have been accorded in the past?

Answer. Mislabeling students or misplacing them in special education classes based on their limited proficiency in English would violate Title VI as well as Section 504 of the Rehabilitation Act of 1973. Thus, OCR should carefully examine all allegations of such mislabeling or misplacement. At present, without knowing what priority was given to this issue in the past, it is difficult to state whether I will place a higher priority on these problems than OCR did in the past. I fully recognize the significance of this issue and if confirmed, will afford it a high priority during my tenure at OCR.

17. In your opinion, are the use and misuse of tests employed to place students in classes for the educably mentally retarded or to assign students to ability groups or tracks, or to gifted and talented classes, appropriate areas for OCR to provide technical assistance and issue policy guidance to schools? Do you know why OCR has not done so?

Answer. It is my understanding that OCR has provided technical assistance on request regarding the appropriate use of tests to assign children to classes. Further, in its investigations, OCR has examined whether tests have been validated for the purpose for which they are used, in accordance with regulations implementing the laws OCR enforces. Section 504 and Title IX regulations contain specific provisions regarding tests validation. Section 504 also requires that placement decisions be based on information from a variety of sources, not just intelligence tests. At this

time, I do not know whether insufficient guidance has been issued in the past, but I shall certainly look into whether additional guidance is necessary in this area.

18. As a lawyer who worked for the West Texas Legal Services Corporation, I am surprised that you are not aware of the Supreme Court's 1982 decision in Plyler v. Doe: As Assistant Secretary for Civil Rights, will you initiate investigations to ascertain whether school districts are placing obstacles in the path of children of undocumented aliens who seek public education?

Answer. The Supreme Court in Plyler v. Doe held that the State of Texas violated the Fourteenth Amendment by withholding State funds for the education of children who were not "legally admitted" into the United States. Such children are in many cases protected under Title VI of the Civil Rights Act of 1964 against discrimination on the basis of national origin in federally assisted programs, and to that extent OCR is already assisting them on a case-by-case basis.

18b. Are you aware of whether OCR has issued policy directives to schools with regard to this [Plyler v. Doe] 1982 decision?

Answer. To my knowledge, OCR has not issued policy on the Plyler decision. However, OCR's regional offices have provided technical assistance and consulted with headquarters on this subject. To my knowledge, the regional offices are fully aware that placing obstacles in the path of children of undocumented aliens who seek public education would in all likelihood have a discriminatory effect on the basis of national origin, in violation of Title VI. If there is a need for additional guidance, OCR will provide it.

19. In recent years, the primary activity of OCR has been investigating and resolving complaints alleging violations of civil rights laws. Some critics charge that OCR has operated, in essence, in a reactive mode in response to complaints brought to its attention; while giving insufficient attention to compliance reviews that are much more likely to deal with systemic discrimination and benefit a larger number of potential victims of discrimination. What, in your view, is the appropriate balance between complaint investigations and compliance reviews for enforcement of civil rights statutes?

Answer. Compliance reviews are an important way of achieving a balanced civil rights enforcement program, by addressing issues of importance that may not be addressed through complaint investigations. I believe that both compliance reviews and complaint investigations are necessary for successful enforcement of civil rights laws.

20. OCR reports indicate that compliance reviews produce twice as many remedies and benefit 6 times as many discrimination victims as complaint investigations. Yet, in FY 1989, OCR initiated only 138 compliance reviews, significantly less than a high of 288 reviews conducted in 1985. Do you plan to increase the number of compliance reviews conducted by OCR?Answer. I am strongly committed to increasing the number of compliance reviews. If confirmed, I intend to argue forcefully for a budget that will allow OCR to have an active compliance review component as part of its enforcement program.

21. One of the most persistent criticisms of OCR has been its failure to obtain effective remedies, even in cases where OCR has made findings of discrimination. I understand that the policy of the Office of Civil Rights is to close complaint investigations and compliance reviews in which violations of the law have been found by means of a Letter of Findings, indicating that the violations cited have been corrected even if a school district has only promised that it will take action to correct the violations. Please comment on the propriety of issuing a "violations corrected" letter of findings when OCR does not know if the violation has been or will be corrected?

Answer. As I understand the Office for Civil Rights' process, a "violation corrected" letter of findings states that a violation has occurred and sets forth the appropriate corrective action plan agreed upon by the recipient and OCR. The terms of this corrective action plan are in writing. OCR then monitors the recipient's adherence to the corrective action plan; if the recipient does not implement the requirements of the plan, then OCR issues a new, "violation" letter of findings, and begins enforcement action. Used properly, the violation corrected letter of findings can be a sensible and efficient way to resolve civil rights violations. Due to the concern that OCR may have, at times, used this enforcement method inappropriately, I intend, if confirmed, to reexamine the violation corrected letter of findings.

21a. Do you believe that it is appropriate to issue a letter of findings that violations have been corrected based only on assurances of future performance and without on-site monitoring? To my knowledge, OCR does little on-site monitoring.

Answer. I recognize the value for on-site monitoring. OCR should conduct on-site monitoring as necessary in order to ensure that the recipient complies with its commitments under the corrective action plan.

21b. The 1989 report of the majority staff of the House Education and Labor Committee has strongly recommended that OCR do away with this practice. Will you do so?

Answer. Under the proper circumstances, the issuance of a violation corrected letter of finding can be a sensible and efficient way to resolve civil rights violations. If confirmed, I intend to reexamine how these letters are used and determine whether it is necessary to provide regional directors guidance on the circumstances under which this mechanism should be utilized.

22. The ultimate sanction under the statutes over which OCR has jurisdiction is termination of Federal funds. The Secretary of Education has the authority to exercise this sanction. As a law enforcement officer in the Treasury Department, you are probably aware that the ultimate credibility of any law enforcement program rests on the knowledge that there are penalties and that these penalties may be employed. As Assistant Secretary for Civil Rights, what would be your advice to the Secretary about using the fund termination sanction?

Answer. I will recommend fund termination whenever appropriate. The statute provides adequate safeguards to ensure that recipients of federal funds have- opportunities to comply voluntarily, but where a recipient remains recalcitrant, the Department must either refer the matter to DOJ or initiate termination proceedings.

23. I understand that this year OCR may receive the highest number of complaints ever received (about 3,000). In testimony before the House, Acting Assistant Secretary Bill Smith testified that, "these substantial increases in complaints place a tremendous strain on OCR's staff resources. Our recent assessment of regional workload found that a substantial portion of staff resources is devoted to complaint investigations, with correspondingly fewer resources available for conducting compliance reviews or related compliance and technical assistance activities." As Assistant Secretary, how do you plan to deal with this problem?

Answer. I firmly believe that complaints alleging violations of the statutes OCR enforces should be aggressively investigated and appropriately resolved. Failure to do so would contravene OCR's mission and breach the trust that it has been given. As mentioned in my testimony at the confirmation hearing, I also recognize the value and efficacy of other enforcement tools, namely compliance reviews and technical assistance and intend to develop a balanced enforcement approach which would include compliance reviews on issues not generally covered by the normal complaint filing mix. Accordingly, if confirmed, I intend to argue forcefully for an adequate budget; review and strongly consider the appropriateness of shifting certain individual complaint matters to Federal agencies with duplicative jurisdiction and attempt to identify cost-savings through training, acquisition of ADP equipment and other measures.

24. From FY 1981 through FY 1987, OCR let over $12 million lapse back to the Treasury. What measures will you undertake to ensure that OCR spends the resources provided to it?

Answer. OCR's funding situation has changed drastically since the seven-year period from FY 1981 through FY 1987 (when funds apparently lapsed). Of the funds appropriated to OCR during the last two fiscal years, there has been virtually no lapse. If confirmed, I will ensure that initiatives already implemented to reduce the likelihood of future lapses of funds (i.e., improvements to OCR systems and procedures related to staffing, requesting the issuance of funds allotments, and monitoring of funds obligations) are continued and further enhanced.

25. There have been increasing incidents of racial harassment and intimidation on some college campuses. Recently, Secretary Cavazos announced a Task Force on campus violence. Do you believe that these racial incidents are a problem?

25a. In your opinion, what appropriate actions could be undertaken by OCR to address racial incidents that are occurring on college campuses?

Answer. Secretary Cavazos cited the elimination of racism on college and university campuses as one of his seven goals for higher education. OCR has been, and I would like it to continue to be, instrumental in this regard. OCR has distributed a resource package to all the regional offices to assist them in responding to requests for technical assistance. If confirmed, I anticipate issuing policy on investigating complaints of racial incidents and coordinating OCR's efforts with other offices working on this problem. Racial incidents at our colleges and universities are a very significant problem reflecting a racial/religious prejudice and hostility that is abhorrent to a pluralistic society. In light of my experience in prosecuting hate violence, I am particularly troubled by these incidents and intend to use the position of

Assistant Secretary as a "bully pulpit" to make a strong contribution toward the elimination of hate violence.

26. Do you believe that diversity in higher education, both in terms of student bodies and university faculty, is an important principle that can be preserved under Title VI?

Answer. Educators have often pointed to the valuable contribution that diversity in a student body and faculty can make to the education experience. To this end, institutions have sought representation, in their student bodies, of a variety of individuals—artistically gifted, athletically skilled, persons of different races, national origins, and economic and geographic backgrounds, individuals who have had unusual life experiences or who have overcome disadvantages. This goal of diversity in a college education may be pursued in a manner that is consistent with Title VI.

27. For a number of years, the Office for Civil Rights was under court order under the Adams case to obtain and monitor higher education desegregation plans in a total of 18 States, in order to obtain compliance with Title VI of the Civil Rights Act. OCR has declared that most of these States are now in compliance with the law, based on its review of those plans. As you know, these decisions have been severely criticized by a number of civil rights groups which believe that these states have not removed the vestiges of segregation. In testimony before the House Education and Labor Committee, Elliot Lichtman, counsel, in the case testified that:

Since OCR has now found most of the States fully in compliance with Title VI despite their egregious defaults on most of their plan goals, the Secretary has plainly shifted the standard of compliance from the achievement of desegregation to the mere carrying out of measures—regardless of whether the measures actually achieved deseareaation. It sadly appears that this shift, which effectively constitutes OCR's abandonment of two decades of desegregation efforts, will apparently only be reversed by directives from the courts or the Congress.

These findings were also reached by the House Government Operations Subcommittee which reviewed the original 10 State higher education desegregation plans, ordered as a result of Adams. That report concluded that "The 10 States whose desegregation plans expired have not eliminated the vestiges of illegal segregation, yet DOED has taken no remedial action to enforce the law."

27a. Are you familiar with the problems cited in the House report? Do you agree that the Office (for) Civil Rights has failed to enforce the law?

27b. In your opinion, what should be the appropriate standard by which to judge success in evaluating higher education desegregation plans? Should the standard be a "good faith" standard where success is judged solely on the implementation of measures, regardless of their outcome. Or, should the standard be actual results?

Answer. I am generally familiar with the findings of the House Report. However, I am not familiar with the specific facts involved in the 10 state higher education plans reviewed by OCR and subsequently found in compliance with Title VI.

Regarding the standard of review, I am advised that OCR has not used a so-called "good faith" test. Rather, OCR has applied a standard focusing on whether a state system, over the 5 year duration of its desegregation effort, has implemented measures that effectively served each overall objective of the original plan and the specific measures set forth therein.

I have not formed a personal opinion regarding what should be the appropriate standard of review, including whether the standard currently used by OCR should be discontinued in favor of one, as your question suggests, that focuses on actual results. In formulating my personal opinion I will seek the advice and counsel of a wide segment of parties interested in this issue, including the National civil rights organizations.

28. What measures do you anticipate the Office for Civil Rights taking to document the incidents of segregation of Hispanic students?

Answer. If OCR, through the use of its school surveys, the receipt of a complaint or other information which prompts a compliance review, suspects that children of Hispanic origin are being illegally segregated within schools or among schools, it will investigate and take appropriate action.

29. In those States where the students must attend schools to which they are assigned, what strategies other than choice do you plan to pursue to ensure that minority students are not assigned to segregated, underfunded schools which do not adequately prepare them for higher education?

Answer. Such issues can be properly addressed through OCR's compliance review program.

30. In the past few years, certain States have adopted placement criteria for assigning students to low-ability classes. Texas, for example, automatically refers to remedial classes those students who perform poorly on the TEAMS test. What is the

role of OCR in initiating investigations into the overrepresentation of minority students in low ability classes?

Answer. Aside from its complaint investigation function, OCR can conduct compliance reviews to investigate overrepresentation of minority students in low ability classes, and provide technical assistance on this issue.

30a. Conversely, will OCR investigate the underrepresentation of minority students in high ability (gifted and talented) classes?Answer. Yes. OCR will investigate complaints of such underrepresentation and conduct compliance reviews where resources permit.

31. One of the basic trends that can be observed from the more than two dozen school finance cases which have been litigated is that many state governments do not fund adequately the full cost of education, especially the education of low-income minority children. OCR has generally been absent from these interdistrict school finance cases. Is this an appropriate area for OCR intervention?

Answer. The U.S. Supreme Court decision in San Antonio Independent School District v. Rodriguez held that States do not have a duty under the Constitution to provide an absolutely equal education with regard to funding. The distribution of funds on the basis of race or the provision of substantially different educational services to students on the basis of race may violate Title VI and its regulation and would be investigated OCR.

31a. What role will OCR play in defending the right of students to equitable treatment in receiving school resources within the same district.

Answer. Title VI regulation prohibits school districts from discriminating on the basis of race in the provisions of educational services.

32. Title VI of the Civil Rights Act, which prohibits discrimination based on race, color and national origin in any federally assisted program or activity, is one of the laws that the Assistant Secretary must understand and interpret.

Answer. Yes, it is.

33. Would a school district be in violation of Title VI if, during the period of desegregation, it significantly decreases its proportion of minority students?

Answer. The loss of a significant minority student population can raise a Title VI violation if it resulted from illegal measures, such as transfers designed to thwart desegregation. However, the question can only be addressed on a case-by-case basis.

34. What are the appropriate standards of comparison to determine whether a school system has discriminated in its employment of teachers and administrators?

Answer. Absent a situation where a primary objective of Federal financial assistance is to provide employment, under Title VI, OCR's employment jurisdiction is limited to addressing those employment matters which result in discrimination against students based on their race. Individual employment complaints are referred to the EEOC. However, where a pattern and practice of discrimination in the employment of teachers and administrators emerges, OCR will retain the complaint.

35. Is a comparison of the percentage of minority administrators and teachers in the school system with the percentage of minority in the school an appropriate standard?

Answer. If the allegation under investigation concerns teachers and administrators, the appropriate comparison would ordinarily be between the percentage of minorities in the relevant labor pool and the percentage of minority administrators and teachers in the schools.

36. Much attention recently has been directed toward athletic programs of school districts as they relate to female sports.

Answer. Yes, it has.

37. What standards should be used to determine if the sports and the levels of competition offered by a school district results in equally effective accommodation of the athletic interests and abilities of each sex?

Answer. I understand that the Office for Civil Rights issued a Title IX Athletics Investigator's Manual on April 2, 1990. The manual updates and supersedes previous guidance to OCR's investigators for investigations of athletics programs under Title IX of the Education Amendments of 1972. OCR scheduled a Title IX Athletics Briefing on May 31, 1990, to which representatives of national education and athletics associations were invited. I understand that participants were provided with copies of the manual and other materials explaining OCR's legal authority and responsibilities in enforcing equal opportunity in athletics programs under Title IX.

38. What in your view is an appropriate remedy for a failure to accommodate, in an equally effective manner, the athletic interests and abilities of each sex?

Answer. Without a specific factual situation, it is difficult to speculate about an appropriate remedy. In some situations it could be as simple as requiring a school or

a district to survey its students about their athletic interests; in others an appropriate remedy might involve restructuring the entire athletics program.

39. Do you regard the provision of technical assistance as an integral function of OCR? If so, what programs would you develop to enhance technical assistance? Are you willing to re-consider the policy that existed prior to 1982 of contracting with experts in the field to provide technical assistance since the current"in-house" policy does not appear to be a success?

Answer. Technical assistance (TA) is an important and integral part of OCR's program operations. TA can be used to address problems found to be pervasive across the country. It can alert institutions that a particular type of problem exists and should be corrected; can eliminate confusion over what is required; and can reduce unnecessary activities and costs by publicizing civil rights requirements and methods of complying with them. If confirmed, I intend to use OCR's TA program, in conjunction with its compliance review program, to pursue broad based high impact issues with the prospect of significantly improving access to a quality education for significant numbers of individuals in classes protected by the civil rights laws.

While I have no personal knowledge to affirm or deny the allegation that OCR's current in-house policy of providing TA has not been successful, I am willing to reconsider the pre-1982 policy of contracting with "experts" in the field.

40. Section 504 of the Rehabilitation Act is a key law that is covered by OCR. Does Section 504 of the Rehabilitation Act require that a handicapped chi Id receive a free appropriate education? Does that include, as the regulations now require, the right to room and board in a residential placement?

Answer. The regulation implementing Section 504 requires that a handicapped child receive a free appropriate public education. The Section 504 regulation emphasizes a process school districts must use to determine the education that is appropriate for each handicapped child. Only in extraordinary circumstances would OCR review an individual placement decision.If a school district, employing that process, determines that placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped child because of his or her handicap, the program, including nonmedical care and room and board must be provided at no cost to the child or his or her parents or guardian.

41. What is your understanding of the relationship between P.L. 94-142 and Section 504 in protecting the rights of handicapped children? Will you attempt to improve, refine, or change in any was the relationship of OCR and the Of fice of Special Education Programs in handling special education cases?

Answer. Public Law 94-142 is a grant statute, and Section 504 provides general prohibition on discrimination against qualified handicapped individuals. Therefore, while the regulations were developed to ensure the greatest degree of consistency, there necessarily are some differences. OCR has issued-guidance on this subject, and OCR staff have provided training to numerous groups, in an effort to increase understanding of the relationship between the two statutes.

I understand that OCR currently has a Memorandum of Understanding (MOU) with the Office of Special Education and Rehabilitative Services. The MOU has resulted in very useful formal and informal cooperation between the two offices. Information is shared

42. What is your specific experience and background in educational equity for women?

Answer. While I do not have any specific experience in the area of educational equity for women, I am familiar with several issues of concern to women by having been a private practitioner of law with a sizable domestic law practice and a member of the Attorney General's (Texas) Commission on Child Support Enforcement. Additionally, my experience with a sister who was a studentathlete provides some sensitivity regarding intercollegiate athletic issues. Most importantly, I look forvard to developing a strong knowledge of issues that relate to educational equity for women in an effort to make a strong contribution to preserving the protections afforded under Title IX.

43. What do you believe are the appropriate goals for Federal support for vocational education? What should the Federal role be in trying to carry out those goals?

Answer. The appropriate goals for Federal support for Vocational-Technical education are to assure that the United States has a well-prepared workforce and that every citizen has the basic skills to participate fully in society. The Federal role in vocational-technical education should be to provide leadership and appropriate resources, promote quality and accountability, and ensure accessibility.

44. Do you believe that vocational education programs provide significant benefits to students who take them? Are vocational education programs effective in helping

students obtain jobs? Do you believe vocational education programs boost student earnings?

Answer. I understand that some programs are excellent and provide tangible benefits, whereas other programs do not. I have been informed that the Office of Vocational and Adult Education is implementing a State Accountability Review System that will in time provide a national perspective concerning program quality and impact. The system involves site visits to all States. The focus of these site visits is to collect information about how States determine vocational-technical education program quality and impact.

45. Do you believe that the recent efforts to improve American education have given an appropriate level of attention to vocational education?

Answer. I have not been personally involved in vocational and technical education programs to the extent to where I could make an accurate assessment of whether it has received the appropriate level of attention in relation to all other areas of education.

46. How are Federal vocational education funds distributed? Do you believe that the current system effectively targets money on the neediest students?

Answer. The Office of Vocational and Adult Education administers the Carl D. Perkins Vocational Education Act, P.L. 98-524. This Act provides formula grants to State Education Agencies to help proved vocational-technical education programs and services to youth and adults. The Perkins Act requires that 57 percent of these funds be used to provide services to specifically targeted populations. Funds are distributed in accordance with approved State plans. I understand that the National Assessment of Vocational Education Study, mandated by Section 403 of the Perkins Act, examined how these funds were distributed within some States and found in some instances that funds were not effectively targeted on the neediest students. Legislation pending in Congress may result in more targeting to needy students.

47. There has been a paucity of data about vocational educatioJ since 1983 when the government stopped using the Vocational Education Data System. Accurate and detailed data is essential to informed policy making. When can we expect to have such data from the Department of Education?

Answer. I understand that in response to the growing need for communication mechanism to better access information and data on vocational-technical education, the Department's Office o Vocational and Data Needs and Analysis Initiative, the end result of which will be a Management Information System.

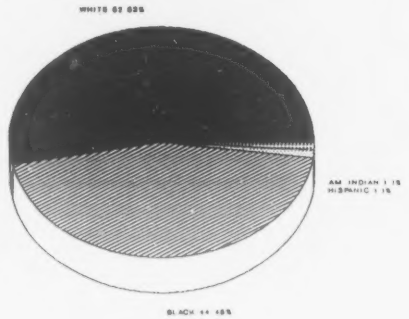
48. As the lead Federal agency concerned with civil rights issues in education, the Department of Education can set an important example with regard to its internal employment policies. Can you tell me what is the representation of women and minorities among schedule C appointees at the Department of Education? Please supply for the record a break down of the number and percentage of women, Blacks, Hispanics, Asians, and Native Americans employed at the Department of Education, by major organizational unit (e.g. Office of the Secretary, Office for Elementary and Secondary Education, etc.).

Answer. As you know, I have not been involved in the operation of the Department of Education prior to my confirmation. I have requested the following information from the Department which I am providing for the record.The following is a breakdown of the total number of women and minorities who serve as political appointees and their percentages of the total number of political appointees in the Department.

Number and percentage of minorities as political appointees: Women (79) 50%; Blacks (10) 6%; Hispanics (12) 8%; and Asians (3) 2%.

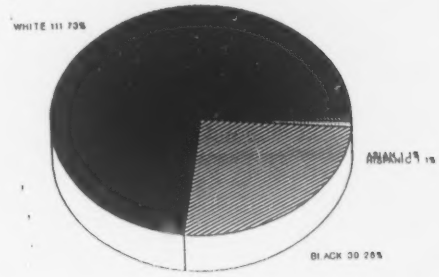
Attached is a series of previously prepared charts which indicate the race and sex makeup of total employees in the principal operating components within the Department of Education. (Charts attached)

WORK FORCE BY RACE
VOCATIONAL AND ADULT EDUCATION



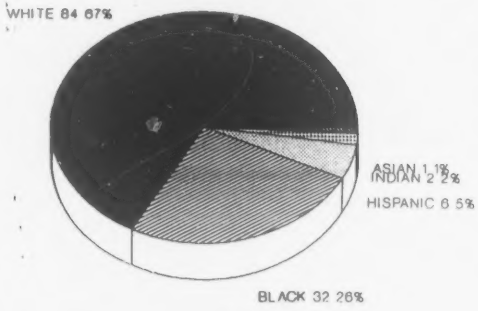
FY 1989

WORK FORCE BY RACE
PLANNING, BUDGET & EVALUATION



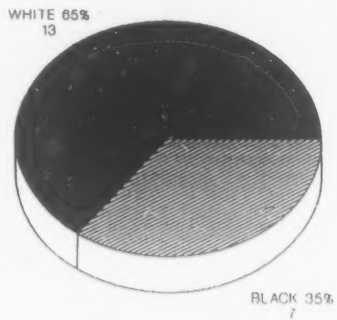
FY 1989

WORK FORCE BY RACE
INTERGOVERNMENTAL AFFAIRS



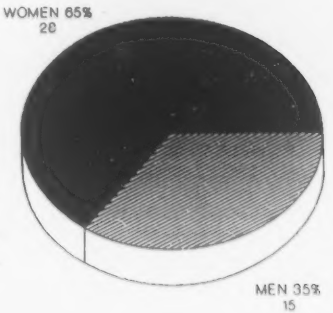
FY 1989

WORK FORCE BY RACE
LEGISLATION



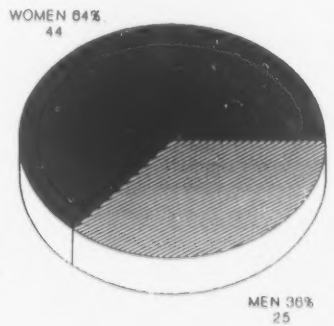
FY 1989

WORK FORCE BY SEX
BILINGUAL EDUCATION



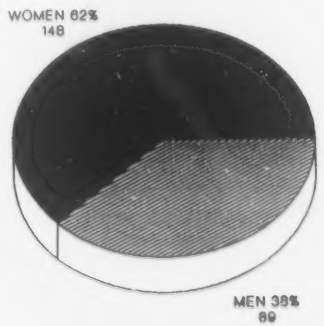
FY 1989

WORK FORCE BY SEX
SECRETARY/UNDER SECRETARY



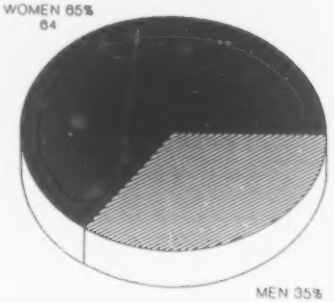
FY 1989

WORK FORCE BY SEX
ELEMENTARY & SECONDARY EDUCATION



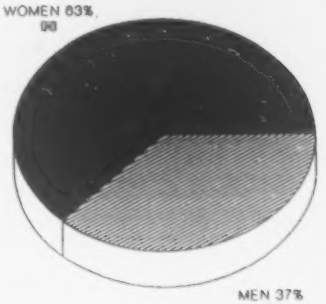
FY 1989

WORK FORCE BY SEX
VOCATIONAL AND ADULT EDUCATION



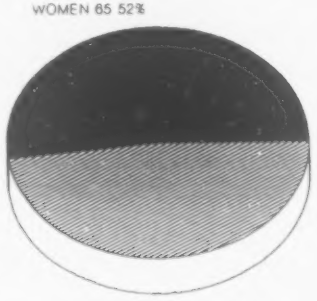
FY 1989

WORK FORCE BY SEX
PLANNING, BUDGET & EVALUATION



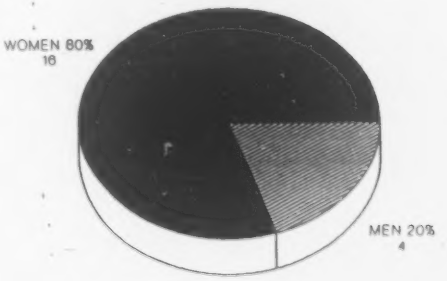
FY 1989

WORK FORCE BY SEX
INTERGOVERNMENTAL AFFAIRS



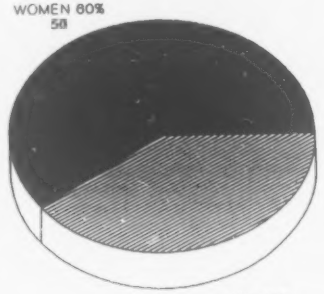
FY 1989

WORK FORCE BY SEX
LEGISLATION



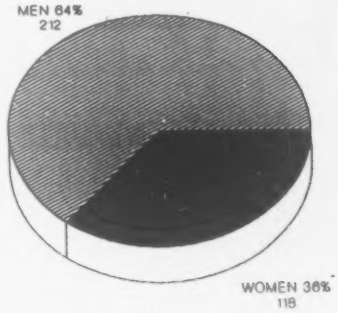
FY 1989

WORK FORCE BY SEX
OFFICE OF GENERAL COUNSEL



FY 1989

WORK FORCE BY SEX
INSPECTOR GENERAL



FY 1989

Questions Submitted by Senator Kennedy to Michael Williams

1. There has been much research which indicates that since the 1960's, in almost all parts of the country, Hispanics have become much more segregated and have seen constantly increasing racial isolation in the schools. However, as a group, Hispanic parents, because of inherent enforcement problems, typically do not take advantage of the OCR complaint process. For Hispanics, these problems are exacerbated by (a) lack of familiarity with civil rights protections; (b) language barriers; and (c) lack of effective civil rights institutions at the local level.

Please comment on what efforts the Office for Civil Rights will make, under your leadership, to make the complaint process more accessible to Hispanics.

Answer. I understand that OCR currently publishes a number of brochures in Spanish regarding its enforcement program. It has at least one individual in each of its regional offices who is bilingual in Spanish to assist Hispanic parents and groups respond to questions involving civil rights statutes and protections. This same problem appears to exist among the several Asian groups. Under my leadership, I will review this area to determine what more can be done toward increasing the amount of technical assistance outreach.

2. A December 1988 report to the House Education and Labor Committee raised questions and concerns about the level of resources available to carry out civil rights compliance reviews. I understand that the number of complaints received by your regional offices has increased three or four hundred percent over the last few years. Since most of these complaints are Section 504 handicapped issues, and touch on Lau issues on coincidentally, are your resources sufficient to carry out the promise for increased compliance reviews given the increased caseload for complaint investigations? How much of your office's resources will be focused on compliance reviews, and what issues will be given priority? Will issues on national origin minorities be taken-up? How will OCR focus on national origin minority issues under the current resources allocations?

Answer. I am aware of the concerns raised by the House Education and Labor Committee regarding OCR's ability to conduct civil rights compliance reviews. I understand that with the substantial increase in complaints received by OCR since the enactment of the Civil Rights Restoration Act of 1987, it curtailed its routine compliance review program due to budget constraints. OCR had, already, begun to refocus its compliance review plans and issues toward Title VI-Race & Ethnic issues and Title IX-Sex issues when it was abruptly confronted with budget problems. I assure you that upon my arrival at OCR, I will quickly scrutinize the budget to determine how to best focus resources on key problems.

3. The continuing growth of the national origin minority student population implies that more and more attention must be paid to segregation and civil rights protections for these children. In California, for example, the "newcomer" schools are sometimes very good and sometimes less good. What steps will OCR take to study the effect of increasing numbers on existing compliance review procedures and, especially on the evolving institutional forms that are being devised to adapt to changing populations?

Answer. The advent of schools known as "newcomer" schools is a recent development in several school systems. I understand that OCR is presently scheduled to conduct a compliance review in Sacramento, California concerning its adoption of a "newcomer" school to determine if it meets the compliance requirements of Title VI of the Civil Rights Act of 1964. As similar evolving institutional forms develop, OCR will conduct appropriate compliance reviews.

4. It has been frequently documented, often through OCR data, that groups of students suffer severe discrimination, e.g., black students misclassified as mildly retarded; limited English proficient students receiving no or inadequate language assistance; blacks disproportionately suspended from school; inadequate science laboratories, books, computers and other curricular aids in schools with high minority enrollment; and widespread ability grouping in racial and ethnic patterns. How will OCR systematically address these issues?

Answer. It is my intention to bring the full force of the tools at OCR's disposal (e.g., Complaint and Compliance Review Investigations and Technical Assistance) to search out and correct situations where students suffer illegal discrimination.

5. Should OCR shift its individual complaint workload to state agencies or other Federal agencies with duplicative responsibilities (e.g., Office of Special Education Programs) so that it can devote substantially more time to OCR-initiated reviews of potential discrimination affecting groups or classes of students (as long as all complaints are investigated by a Federal agency or a state agency reporting back to a Federal agency so that the terms of the order would be met)?

Answer. It is my understanding that OCR has developed several delegations of authority with other Federal agencies aimed at avoiding duplication of investigative efforts. In addition, OCR has a relatively new memorandum of understanding with the Office of Special Education Programs, to route complaints to the appropriate office in order to avoid duplication of efforts.

I will review whether OCR can, under its existing regulations, shift individual complaint workload to States or to other Federal agencies. Since the Adams order has been dismissed (although that dismissal is on appeal), the issue of meeting the Adams terms presently is moot. I will consider further delegations of authority as appropriate.

6. What plans does OCR have to identify and address the following complex, documented equity issues which seem to involve violations of the civil rights laws it enforces:

access of minority students compared to non-minority students to equivalent curriculum content, learning time and effective teaching within the same schools and school districts and between school districts;

State responsibility for wide variations in the identification of all or various categories of disabled students among city, suburban and rural school districts;

distribution between city and suburban schools and between minority and non-minority schools of the best teachers, as measured by tests and performance evaluations, and of teachers trained in subject areas of shortage such as math and science;

distribution of Federal and State vocational education funds to schools in patterns which correspond negatively to the proportions of minority student enrollment;

the practice and effects of differential enforcement of compulsory attendance laws according to the race or national origin, or gender of truant youngsters;

school system treatment of pregnant and parenting teenagers;

patterns of school overcrowding and the effects on minority versus non-minority students;

student-to-student sexual harassment, especially in vocational education;

reasons for growth of racially and ethnically isolated community colleges; and

reasons for and consequences of different uses of computers in minority and non-minority schools, and by girls as compared to boys.

Answer. I intend to aggressively and creatively enforce the laws under the jurisdiction of OCR. As I indicated in my letter to Senator Simon, dated May 25, 1990, it is my intention to invite representatives of the advocacy groups during the first four months of my tenure to foster a productive dialogue about the issues which you have identified. I hope to determine which issues appropriately require action and how OCR might best approach them using the full range of OCR's enforcement program (complaint investigation, compliance reviews and technical assistance).

7. In reviewing the case of Oklahoma City Public Schools vs. Dowell. the Supreme Court is considering for the first time whether there should be national standards to determine the unitary status of school systems. What is your opinion of the merits of this case? What should be the Education Department's role in this area?

Answer. Since the Supreme Court is currently considering the issue of whether there should be national standards to determine the unitary status of school systems, it would be more appropriate to reserve comment at this time in light of the fact that the issue is a pending matter before the Court. Once the Supreme Court renders a decision, 0CR will ensure compliance with the Court's orders.

8. Do you believe fund termination is an appropriate sanction when institutions of higher education or state or local educational agencies fail to abide by federal mandates? If so, under what circumstances?Answer. Termination of funds is an appropriate sanction when noncompliance is found under any of the statutes OCR enforces, and the recipient of Federal financial assistance refuses to submit an adequate plan designed to bring it into compliance.

9. Please comment on the state of higher education desegregation, particularly in the South. Is there any action that OCR should be taking in this area at this time?

Answer. It is my understanding that OCR has notified seven States (Arkansas, Georgia, Missouri, North Carolina Community Colleges, Oklahoma, South Carolina and West Virginia), that they are in compliance with Title VI of the Civil Rights Act of 1964. Three other States (Delaware, Florida and Virginia) were informed that they had not yet fully implemented certain activities specified in their desegregation plans even though the plans have expired. As to Kentucky, Texas, and Pennsylvania, OCR is currently in the process of reviewing reports of OCR on-site visits and updated information supplied by the respective States to determine their compliance status. OCR anticipates that final reports and evaluation letters will be issued this year. The Maryland plan will not expire until June 30, 1990. These plans required these States and their institutions to take actions designed to achieve

progress towards desegregation.Upon confirmation I will review this area to ensure that compliance determinations meet legal standards.

10. Please describe the various responsibilities of OCR as you view them, and how limited resources would be divided among these to reflect your priorities.

Answer. As an enforcement agency, OCR has the responsibility to aggressively enforce the four civil rights statutes under which it has jurisdiction (Title VI-CRA of 1964; Title IX-Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975). Of the highest priority is OCR' s obligation to respond to and conduct a prompt investigation on complete complaints as they are filed by complainants. In this area, OCR has no control over the statutory spread of complaints, issues or numbers. OCR addresses complaints as they are received.

However, OCR's goal should be to utilize its compliance review and technical assistance programs, as resources permit, to pursue broad-based, high impact issues that have the prospect of significantly improving access to a quality education for significant numbers of individuals protected by the civil rights laws. Both compliance reviews and technical assistance, by their nature:

have significant implications for major groups of beneficiaries, e.g., all children suffering from attention deficit disorder, all Asian Americans seeking to enter post-secondary education;

can be directed toward a particular educational level or type of recipient, e.g., elementary schools, vocational rehabilitation institutions;

can be focused on particular areas of the country, e.g., States with significant American Indian populations;

can reflect the conscious decisions of the agency as to size scope and topic, e.g., equal educational opportunities for national origin minority students who are limited-English proficient;

can be timed to coincide with appropriate policy development activities; and

can be structured so as to reflect the priorities of the President and the Secretary.

Questions Submitted by Senator Hatch to Michael Williams

1. You were first a co-counsel and finally the sole prosecuting attorney in the case of United States v. Stephen Samuel Miller, weren't you?

Answer. Yes.

2. I understand that this case investigation and prosecution was one of the most significant criminal civil rights matters handled by the Department of Justice in recent years. It has been highlighted in the Department's annual report, in various budget authorizations, and in congressional hearings. Could you give us a brief summary of the case?

Answer. Members of the Carolina Knights of the Ku Klux Klan (CKKKK) and its successor, the White Patriot Party (WPP), were convicted of federal crimes, namely conspiring toe obtain weapons, explosives and equipment stolen from U.S. military installations for the purpose of equi¡ping a white supremacist army. In addition, the conspirators attempted to rob a Fayetteville, North Carolina Pizza Hut to obtain money to assassinate Alabama civil rights lawyer, Morris Dees.

3. I understand that five members of the White Patriot Party were convicted of Federal crimes in this case and that these convictions virtually destroyed what was the largest and perhaps most violent white supremacist organization in the South. Is that an accurate statement?

Answer. Four members of the White Patriot Party were convicted of weapons violations in United States v. Stephen Samuel Miller, et al. Five other WPP member were convicted in related prosecutions.

4. I understand that you received the Attorney General's Special Achievement Award for your role in that prosecution. Is that correct?

Answer. Yes.

5. Let's turn to the case of the United States v. Keith Gilbert. You were sole trial attorney in that case, weren't you?

Answer. Yes.

6. Could you describe that case for us?

Answer. Gilbert, a former member 'of the Aryan Nation, was convicted of four counts of violating the federally protected housing rights of black and interracial families in Post Falls and Couer d' Alene, Idaho. Gilbert, an avowed racist, attempted to drive these families from their homes by harassing and threatening their children. He attempted to run over one youth with his car, verbally assaulted a second youngster, sicked a dog on a third child and mailed threatening letters to the director of an adoption agency that specialized in minority children.

7. As I recall, this incident received national media attention on ABC "Nightline" and in People Magazine, didn't it?

Answer. Although the trial did not receive National media attention the incident which prompted the trial did.

8. And the case resulted in a decision from the Ninth Circuit Court of Appeals expanding the protection for third persons who aid individuals in exercising their federally protected housing rights, am I correct?

Answer. Yes.

9. And for your role in that prosecution, you received the Assistant Attorney General's Special Commendation award, didn't you?

Answer. Yes.

10. You were also sole trial counsel in the case of United States v. David Lee Thompson, weren't you?

Answer. I was the lead trial counsel in this matter.

11. Tell us about that case.

Answer. Thompson, a former klansman, was convicted of forcibly interfering with the federally protected housing rights of a single, black mother of three children when he arsoned her home.

12. What was the significance of that case, Mr. Williams?

Answer. The State of Kentucky did not solve this matter during the three year period following the incident. It was only after a Federal investigative grand jury was empaneled that Thompson was identified, charged and convicted.

The defendant was sentenced to the maximum term of incarceration under then existing Federal criminal civil rights law—one (1) year—and ordered to pay restitution in the amount of $30,509.36.

13. I understand you prosecuted some cases involving Civil Rights violations on the part of police officers. Could you summarize these cases for us?

Answer. I prosecuted four cases involving violation of Federal criminal civil rights laws by law-enforcement officers. They were as follows:

1. U.S. v. Horace Jerome Worthy (MD-Alabama) - Defendant was convicted of assaulting six black arrestees.

2. U.S. v. Juan Denny Jr. (Arizona) - Defendant was convicted of assaulting a Native American Juvenile with a metal flashlight.

3. U.S. v. Jerry Michael Lewis (MD-North Carolina) - Defendant was convicted of forcibly interfering with the federally protected employment rights of a black state correctional guard, when he threatened, with a gun, the correctional officer in order to discourage him from taking the Sergeant's promotional examination.

4. U.S. v. McLain. et. al - (SD-OK) - Sheriff McLain and three Deputies were convicted of beating two burglary suspects in an effort to secure a confession.

14. Thank you very much, Mr. Williams. Anyone familiar with your role in these three cases knows you are a vigorous, (enforcer) of this nation's civil rights laws. Will you approach enforcement of those laws as they impact on programs of the Department of Education with the same enthusiasm?

Answer. Yes.

Senator SIMON. Our hearing stands adjourned.

[Whereupon, at 3:15 p.m., the committee was adjourned, subject to the call of the Chair.]

○